1986

Y1.1/8:99-435/v.4

Union Calendar No. 260

99th Congress, 1st Session - - - - - - - - - - - - - - House Report 99-435

ORIGINAL MF12-4

REPORT

OF THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES

DURING THE

NINETY-NINTH CONGRESS
FIRST SESSION

ON

INVESTIGATION OF THE ROLE OF THE DEPARTMENT OF JUSTICE IN THE WITHHOLDING OF ENVIRONMENTAL PROTECTION AGENCY DOCUMENTS FROM CONGRESS IN 1982-83

together with

ADDITIONAL, DISSENTING, AND SUPPLEMENTAL VIEWS

AND

APPENDICES

(Volume 4 of 4)

DECEMBER 11, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Union Calendar No. 260

99th Congress, 1st Session - - - - - - - - - - - - - - House Report 99-435

REPORT

OF THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES

DURING THE

NINETY-NINTH CONGRESS
FIRST SESSION

ON

INVESTIGATION OF THE ROLE OF THE DEPARTMENT OF JUSTICE IN THE WITHHOLDING OF ENVIRONMENTAL PROTECTION AGENCY DOCUMENTS FROM CONGRESS IN 1982-83

together with

ADDITIONAL, DISSENTING, AND SUPPLEMENTAL VIEWS

AND

APPENDICES

(Volume 4 of 4)

DECEMBER 11, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
56-055 O WASHINGTON : 1986

I

COMMITTEE ON THE JUDICIARY

PETER W. RODINO, Jr., New Jersey, *Chairman*

JACK BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
JOHN CONYERS, Jr., Michigan
JOHN F. SEIBERLING, Ohio
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
DAN GLICKMAN, Kansas
BARNEY FRANK, Massachusetts
GEO. W. CROCKETT, Jr., Michigan
CHARLES E. SCHUMER, New York
BRUCE A. MORRISON, Connecticut
EDWARD F. FEIGHAN, Ohio
LAWRENCE J. SMITH, Florida
HOWARD L. BERMAN, California
FREDERICK C. BOUCHER, Virginia
HARLEY O. STAGGERS, Jr., West Virginia
JOHN BRYANT, Texas

HAMILTON FISH, Jr., New York
CARLOS J. MOORHEAD, California
HENRY J. HYDE, Illinois
THOMAS N. KINDNESS, Ohio
DAN LUNGREN, California
F. JAMES SENSENBRENNER, Jr., Wisconsin
BILL McCOLLUM, Florida
E. CLAY SHAW, Jr., Florida
GEORGE W. GEKAS, Pennsylvania
MICHAEL DeWINE, Ohio
WILLIAM E. DANNEMEYER, California
HANK BROWN, Colorado
PATRICK L. SWINDALL, Georgia
HOWARD COBLE, North Carolina

M. Elaine Mielke, *General Counsel*
Garner J. Cline, *Staff Director*
Alan F. Coffey, Jr., *Associate Counsel*
James Schweitzer, *Counsel*
Jonathan Cuneo, *Counsel*

LETTER OF TRANSMITTAL

U.S. House of Representatives,
Committee on the Judiciary,
Washington, DC, December 11, 1985.

Hon. Thomas P. O'Neill, Jr.,
Speaker, U.S. House of Representatives,
Washington, DC.

Dear Mr. Speaker: I transmit herewith the Committee on the Judiciary's *Report on the Investigation of the Role of the Department of Justice in the Withholding of Environmental Protection Agency Documents from Congress in 1982-1983,* which the Committee ordered reported to the House on December 5, 1985.

The report is of great significance to the House as an institution because it deals directly with the ability of Congress to obtain the information it needs to do its job. More broadly, the report is of importance to all Americans because it involves the Legislative Branch's ability to set effective national policy on the subjects before it. If Congress cannot get timely and complete information, then it cannot discharge its responsibilities; the policies that Congress makes can only be as good as the factual information before it.

The documents that the Department of Justice advised the Executive Branch to withhold under a claim of executive privilege during the EPA controversy involved a critical legislative and oversight area—the health and safety of the American people. The hazardous waste clean-up program is vitally important to our nation, and, at the time of the EPA controversy, its statutory authority was due to expire. There can be no doubt that the House subcommittees that were seeking documents and information from EPA had legitimate and pressing oversight and legislative responsibilities to carry out. These Congressional efforts to address the serious problems associated with the cleanup of hazardous waste sites throughout the United States were frustrated and delayed by a privilege claim that should never have been made.

In this instance, the Department of Justice recommended that the documents requested by Congress be withheld despite the objections of EPA and innumerable signs that there were substantive problems with the privilege claim. The Committee report explores in great detail how, during the controversy, the Department misserved not only Congress, but the Executive and Judicial Branches as well. In sum, the Department created a needless constitutional crisis.

While I do not welcome many of the facts that were uncovered in the course of the Committee's two and one-half year investigation, we were nonetheless compelled to report them. Had we failed diligently to pursue this matter, we would have been derelict in our duty to the House, to future Congresses, and to the President.

It serves no one's interest when a constitutional confrontation is needlessly precipitated. Hopefully, the issuance of this report will help avoid such unnecessary inter-branch confrontations in the future.

With best regards,
Sincerely,

PETER W. RODINO, Jr.,
Chairman.

TABLE OF CONTENTS

Page

I. INTRODUCTION

- A. The Origins of the Judiciary Committee's Investigation 5
- B. Summary of Findings and Conclusions 8

II. BACKGROUND

- A. Summary 23
- B. The Superfund Law and Its Administration 24
- C. Events Preceding the EPA Controversy 26
  - 1. The Watt Controversy 26
  - 2. EPA Informational Policies Immediately Prior to the Controversy 28
- D. Department of Justice Awareness of Possible Improprieties in the Superfund Program in the Early Fall of 1982 31
  - 1. Concerns at EPA About Improprieties in the Administration of Superfund in the Summer and Fall of 1982 32
  - 2. The September 2, 1982 Meeting Concerning the Seymour Site and its Aftermath 35
  - 3. The September 7, 1982 EPA Meetings Concerning the Stringfellow Site and the Justice Department's Awareness of Possible Political Manipulation 38
  - 4. Other Evidence that Officials Later Involved in the Executive Privilege Claim Knew of Political Discussions Concerning Superfund Sites in the Fall of 1982 40

III. THE INITIAL PHASE OF THE DISPUTE

- A. Summary 43
- B. Prolman's Trip to New York and the Levitas Subcommittee Request for Documents 46
- C. EPA's Initial Contact with the Department 51
- D. EPA Agrees to Comply with the Levitas Request 52
- E. The Dingell Subcommittee's Request For Documents And its Subsequent Narrowing 55
- F. Initial EPA Review of Documents in Response to the Dingell Request 57
- G. EPA's Continuing Attempts to Secure an Advisory Opinion From the Department 61
- H. The Department's Formulation of a Response on Enforcement Sensitive Materials 62

I. The Initial Identification of the Type of Documents to be Withheld: The Meetings of September 29

  - 1. The 8:30 a.m. Meeting 64
  - 2. The 10:00 a.m. Meeting with the Levitas Subcommittee Staff 66
- J. Source of Concern About Enforcement Files 68
- K. The Department Becomes Aware of a Second Potential Problem at EPA—Rita Lavelle's Failure to Recuse 69
- L. The Levitas Subcommittee Authorizes the Issuance of a Subpoena ... 70

M. The Events of October 1

  - 1. The 10:00 a.m. Meeting in OLC 71
  - 2. The 11:30 a.m. Meeting with the Levitas Subcommittee 73
  - 3. The Response to the Dingell Subcommittee 75

N. The Events of October 6

  - 1. The 3:00 p.m. Meeting at EPA 76
  - 2. The 4:00 p.m. Meeting with Barrett 80
- O. The October 7 Letter to the Levitas Subcommittee and Its Aftermath 81
- P. Perry's Expressed Willingness to Comply with the Dingell Subcommittee Request 86

Page
Q. The Document Transfer Episode 87
  1. Did Perry Tell Barrett that He Saw No Reason to Withhold the Documents and that He So Advised the Department? 88
  2. Did Perry Tell Barrett that a Department Official Told Him to Send All Copies of All Withheld Documents, Thereby Purging EPA's Files? 89
  3. Did the Department Advise Perry to Transfer All Copies of the Withheld Documents to the Department And Thereby Purge EPA's Files? 91
R. Knowledge of Senior Department Officials About EPA's Willingness to Furnish the Disputed Documents 93
S. The Transfer of the Documents to the Department And the Initial Review at the Department 94
T. Regnery's Attempt to Settle the Dispute 96
U. What Happened to the Regnery-Christy Proposal? 100
V. The 7:00 a.m. Meeting on October 15 103
W. The McConnell Letter to Dingell of October 18 105

IV. THE DEPARTMENT'S RECOMMENDATION OF EXECUTIVE PRIVILEGE TO THE PRESIDENT AND ITS AFTERMATH

A. Summary 109
B. Introduction 113
C. The Dingell Subcommittee Subpoena and the Meeting of October 21
  1. The Subpoena 114
  2. The Meeting 115
D. The Meeting of October 22 123
E. The Department of Justice Obtains the Campaign Contribution Records of Members of Congress 124
  1. The Origin Of, Rationale For, And Discussions About the FEC Inquiry 127
  2. The Use of the FEC Information 130
F. The Department's October 25 Letter to Dingell 133
G. The Department's Recommendation to the President that He Assert Executive Privilege Over the Withheld Documents 134
H. The Materials the Department Forwarded to the President on October 25
  1. The Olson Memorandum 135
  2. The Draft Memorandum to Administrator Gorsuch 138
  3. The 35 Withheld Documents 139
I. The Representations in the Materials the Department Forwarded to the President
  1. The Representation that the Documents Did Not Contain Evidence of Unlawful Conduct 139
  2. The Representation that the Administrator Concurred in the Recommendation to Assert Executive Privilege 141
  3. The Representation on the Numbers of Documents 146
  4. The Representation on the Procedural History of the Dispute 147
  5. The Representation on Legal Harm From Release to the Subcommittee 148
J. Signposts that the Department Ignored in Forwarding the Privilege Recommendation 149
  1. Lands Officials Were Aware of Information on Possible "Election Tracking" of Superfund Decisionmaking 149
  2. OLC and Possibly Lands Were Aware of the Failure of Assistant Administrator Lavelle to Recuse Herself From EPA Decisions with Regard to the Stringfellow Site 150
  3. The Department Was Well Aware That EPA Was Willing to Turn Over the Withheld Documents 151
K. The Department's Failure to Employ Adequate Procedures 151
  1. The Department's Failure to Understand the Documents or Reasonably Attempt to Do So 151
  2. The Department's Failure to Brief or Contact the Administrator in Advance of the Recommendation 157
  3. The Lack of Senior Level Department Involvement 158
L. The Rescheduling of the October 26 Hearing 159
M. The President Is Briefed 162

Page

N. The October 27 *Washington Post* Article and the Reaction to It

    1. The *Post* Article 163
    2. EPA's Reaction and the Subcommittee's Response 164
    3. Olson Prepares a Response 166
O. Olson Is Made Aware of Opposition to the Privilege Claim Within OLC 168
P. EPA Changes its Position: The Levitas Subcommittee Is Denied Access to Documents 168
Q. The Discovery of Additional Documents on the Stringfellow Site 173
R. The Department Formulates a Negotiating Proposal 174
S. The Meeting of November 1: Administrator Gorsuch Is Approached Directly for the First Time 175
T. Promulgation of the Reagan Memorandum 179
U. Administrator Gorsuch Speaks to Secretary Watt and Contacts the White House in an Effort to Head Off the Privilege Claim 180
V. The Dingell Letter of November 8 182
W. The Dingell Subcommittee Reschedules the Subpoena Return and Schedules Perry to Testify 183
X. Perry for the First Time Provides Written Instructions to the EPA Legal Staff on How to Respond to Congressional Requests for Enforcement Documents 184

V. EXECUTIVE PRIVILEGE IS ASSERTED AND THE HOUSE OF REPRESENTATIVES VOTES CONTEMPT

A. Summary 187
B. The Levitas Subcommittee Subpoena 193
C. The Afternoon Meeting of November 22: Administrator Gorsuch Meets With Olson for the Second Time 196
D. EPA Gathers 23 Responsive Documents To Be Withheld From the Levitas Subcommittee 198
E. McConnell's "Settlement Offer" to the Dingell Subcommittee 200
F. The Presidential Instruction to the Administrator and the Attorney General's Letters to Chairmen Dingell and Levitas 203
    1. The November 30 Presidential Instruction 203
    2. The Attorney General's November 30 Letter to Dingell 204
    3. The Attorney General's November 30 Letter to Levitas 207
    4. Release to the Press of the Attorney General's Letter 208
    5. The Preparation of the November 30 Presidential Instruction and the Attorney General's Letters 208
G. The Department's Second Transmission of Materials to the President 209
H. The Substance of the Written Materials That the Department Prepared for the President In Anticipation of the Privilege Claim 212
    1. Statement on Misconduct 213
    2. Statements on Numbers of Documents 213
I. The Policy on Misconduct 216
J. The Categorical Nature of the Privilege Claim 218
K. December 1: Administrator Gorsuch Meets with Olson for the Third Time 219
L. More Signals that the Planned Privilege Claim Lacked the Political Support of the Minority 221
M. The December 2 Levitas Subcommittee Hearing 223
    1. The Episode in the Minority Lounge 224
    2. The Hearing 225
    3. The Review of Documents 227
        (i) EPA 229
        (ii) Lands 231
        (iii) OLC 231
        (iv) Deputy Attorney General and Attorney General 232
        (v) White House Counsel's Office 232
N. December 3: Perry Appears Before the Dingell Subcommittee 233
O. The Meeting of December 6: The Executive Branch For the First Time Sets Up Formal Procedures For the Identification and Review of Enforcement Sensitive Documents 237
P. EPA Finally Prepares an Index Describing the Documents Withheld From the Dingell Subcommittee and Explaining the Basis For Their Withholding 241

Q. References to Politics and Possible Improprieties by Lavelle Are "Discovered" in the Withheld Documents: The December 8-9 Review by Brown, Ramsey, and Malson

Page

1. Brown's Review 243
2. Ramsey's Review 245
3. The Brown-Ramsey-Malson Joint Review on December 9 246
    (i) The Process 246
    (ii) Discussions of Political References in the Withheld Documents 248
    (iii) Discussions of Evidence of Improprieties By Lavelle in the Withheld Documents 250

R. The Aftermath of the Joint Review: Department Officials Are Told About Possible Problems With the Withheld Documents

1. Simms and Olson Are Advised About Document 38 251
2. Simms' and Olson's Knowledge of the December 9 Discussions About Political References in the Documents 252
3. Walker's December 9 Review of the Withheld Documents 253
4. The State of Knowledge of Other Officials About Possible Evidence of Impropriety in the Withheld Documents 256

S. The December 8 Meeting Between Chairman Levitas, the Department and EPA and the Department's December 9 Letter to Levitas 257
T. The December 9 Briefing of the Minority Members of the Public Works Committee 262

U. The Events of December 10

1. The Full Public Works Committee Cites Gorsuch for Contempt of Congress 263
2. Perry's Letters to Chairman Dingell 264

V. The Reference to House Judiciary Committee General Counsel Alan Parker 265

W. The Weekend of December 11-12 and Its Aftermath: EPA Prepares for the December 14 Dingell Subcommittee Hearing

1. The Weekend Meeting 266
2. The Ensuing Memoranda 270

X. Simms Becomes Convinced that Perry Has Committed Perjury and that the Privilege Claim is Destined for Failure 273
1. Simms' Reaction to the December 3 Transcript 274
    (i) Perry's Testimony on Whether He Had Discussed His Possible Appearance Before the Dingell Subcommittee on October 26 With the Department on October 25 274
    (ii) Perry's Testimony About the October 8 Transfer of EPA Documents to the Department and the Transmittal of the Documents to Simms 275
    (iii) Perry's Testimony on Whether He Told Barrett on October 8 that the Department Had Ordered Him to Eliminate All Copies of the Requested Documents from EPA's Files 276
    (iv) Perry's Testimony on Whether He Told Barrett on October 8 That He Had Told the Department That There Was Nothing in the Documents Warranting Continued Withholding 276
    (v) Perry's Testimony on Whether He Agreed to Review the Withheld Documents in His Meeting with Barrett and Other Dingell Subcommittee Staff Members on October 6 278

Y. Simms' Conversation with Olson 278
Z. The Certification that the Documents Had Been Reviewed and Met the Criteria for Executive Privilege 281
1. Hauser 284
2. Olson 286
    (i) Olson's December 13 Meeting with Gorsuch 286
    (ii) Olson's Review of the Documents 289
3. Dinkins 290
4. Walker 294
5. Ramsey 294
6. Perry 294
7. Brown 296

Page
AA. EPA's Decision to Turn Over Document 38 296
BB. The December 14 Dingell Subcommittee Hearing 298
CC. Olson's Memoranda of December 14 301
DD. Submission of Certification 302
EE. December 16: The House Votes to Hold Administrator Gorsuch in Contempt After a Settlement Agreement Acceptable to Both the Majority and Minority Is Rejected by the Executive Branch 302
  1. The December 16 Negotiations 303
  2. The Proposed Agreement 305
  3. The Proposed Agreement Is Rejected 306
  4. EPA's Role in the Negotiations 308
  5. The House Vote 308
FF. Signposts the Justice Department Ignored in Proceeding with the Executive Privilege Claim and Filing Suit Against the House 310
  1. Lands Officials Were Aware Not Only of Discussions of Superfund "Election Tracking" at EPA But Also That the Withheld Documents Contained Political References. 310
  2. Department Officials Had Information That At Least Two Senior EPA Officials on Whom the Privilege Claim Most Heavily Depended Might Have Engaged in Improper Conduct 311
    (i) Perry 311
    (ii) Lavelle 311
  3. The Department Ignored Repeated Explicit Warnings About the Nature of the Dingell Subcommittee Inquiry and the Contents of the Withheld Documents 312
  4. The Department Was Repeatedly Warned by Minority Members and Staff That Its Position Lacked Both Legal Merit and Political Support 312
  5. The Department Disregarded EPA's Reservations About the Executive Privilege Claim 312

VI. THE DEPARTMENT SUES THE HOUSE OF REPRESENTATIVES AND THE UNITED STATES ATTORNEY FAILS TO PROSECUTE ADMINISTRATOR GORSUCH

A. Summary 315
B. Background 321
  1. The Department's Stated Position Has Been That It Would Not During the EPA Controversy and Will Not Now Enforce the Congressional Contempt Statute Against An Executive Branch Official Who Asserts Privilege on the Advice of the Department or at the Direction of the President 321
  2. In the EPA Controversy the Department Recognized Its Conflict of Interest, Yet Took No Action to Avoid It and Officially Denied Its Existence 325
  3. The Concept of a Civil Suit and the Recognition of Its Problems in Advance of the EPA Controversy 328
  4. The Possibility of a Civil Statute 330
C. The Department of Justice Decides to File Suit Against the House of Representatives and the Civil Division Is Drawn Into the Controversy 333
  1. The Civil Division Becomes Involved in the Controversy 333
  2. The 5:30 p.m. Meeting on December 15: The Justice Department Finally Begins to Draft a Complaint 336
  3. The Events of December 16 338
    (i) The 8:15 a.m. Decision Meeting 338
    (ii) The 11:15 a.m. McGrath-Gorsuch Meeting and Its Aftermath 342
    (iii) The Preparations For the Filing of the Complaint 346
    (iv) The Complaint 347
D. The Role of the United States Attorney in the EPA Controversy 350
  1. Events Involving the U.S. Attorney 351
  2. Direction to the U.S. Attorney 354
  3. Indications That Harris Might Have Been Directed Not to Prosecute Gorsuch 357
    (i) Notes of Department Officials and Employees 358

Page
- (ii) Statements By Department Officials and Employees 358
- (iii) Other Evidence 360
- E. EPA Involvement With the Civil Case Prior to the Filing of the Department's Complaint 360
- F. Gorsuch's Dissatisfaction With Her Legal Representation 363
  - 1. The Involvement of Ropes & Gray 363
  - 2. The Approach to Solicitor General Rex Lee 365
- G. The Meeting of December 20 366
- H. The Meeting of Senior Department Officials on December 22: The Solicitor General's Office Makes Clear There Is a 90% Chance the Department Will Lose the Civil Suit 369
- I. The Triangular Tensions Between Civil, OLC and EPA 370
  - 1. Disputes Between EPA and the Department
    - (i) General 371
    - (ii) Gorsuch as a Plaintiff in Her Private Capacity 372
    - (iii) Nonconstitutional Defenses to the Subpoena 375
    - (iv) The Applicability and Constitutionality of the Congressional Contempt Statute 378
    - (v) The *Touhy* Argument 378
    - (vi) The Department's Failure to Provide EPA With Written Legal Advice 379
  - 2. Disputes Between OLC and the Civil Division 381
    - (i) OLC's Extensive Involvement in the Litigation 381
    - (ii) The Dispute Over the TRO 382
    - (iii) The Dispute Over the Applicability/Constitutionality of the Congressional Contempt Statute 383
- J. December 29: The Filing of the Amended Complaint
  - 1. The Events of December 29 386
  - 2. The Amended Complaint 388
- K. December 30: The House of Representatives Moves to Dismiss the Department's Complaint in the Civil Suit 389
- L. January 10: The Department Files Its Motion for Summary Judgment in the Civil Suit 392
- M. The Department's Belated Review of the Withheld Levitas Documents and Its Misrepresentations About that Review in Papers Filed with the District Court 396
  - 1. December 22 to January 3: Lands Division Officials Review the Withheld Levitas Documents for the First Time 398
  - 2. The Civil Division's Knowledge that the Withheld Documents Had Not Been Reviewed in a Timely Fashion 402
  - 3. The Department's Misrepresentations About the Review of the 22 Withheld Levitas Documents In Papers Filed With the District Court
    - (i) The Dinkins Declaration 404
    - (ii) The Perry Declaration 406
    - (iii) The Statement of Material Facts 408
    - (iv) The Memorandum in Support of the Motion for Summary Judgment 409
  - 4. The Preparation of the Department's January 10 Court Filings 410
    - (i) The Perry Declaration 410
    - (ii) The Dinkins Declaration 413
- N. Simms' Concerns About EPA Deepen Further 415
  - 1. January 11: A News Account Suggests Possible Perjury by Lavelle, and Simms Has a Second Conversation With Olson About Perry's Possible Perjury on December 3 416
  - 2. Perry's Representation About Presidential Review of the Withheld Documents 417
- O. The Events Leading to Oral Argument
  - 1. The Department Antagonizes the Speaker of the House 418
  - 2. Review of the Withheld Documents Within the Civil Division.... 420
  - 3. The Civil Division's Knowledge of Possible Problems at EPA and in the Withheld Documents and Its Failure to Advise the Court 422
  - 4. The Meeting of January 31: Gorsuch Again Expresses Her Desire to Raise All Defenses 426
  - 5. February 1: Oral Argument 428
- P. February 3: Judge Smith Dismisses the Department's Complaint 429

Page

- Q. The Department's Immediate Reaction To The Dismissal of Its Lawsuit
  - 1. The Issuance of McGrath's Press Statement 430
  - 2. The February 3 Meeting Among Senior Department Officials 431
  - 3. McGrath and Dinkins Call Perry 432
- R. The Test Case Theory 432

VII. THE EXECUTIVE PRIVILEGE CLAIM COLLAPSES

- A. Summary 439
- B. The 98th Congress Begins: The Dingell Subcommittee Again Seeks Information on Superfund
  - 1. Chairman Dingell's Letter of January 14 444
  - 2. Chairman Dingell's Letter of January 25 449
  - 3. The Creation of the Staff Working Group 450
- C. Panic Begins to Set In at the Department: The Meetings of January 26 452
  - 1. The Meetings of January 26
    - (i) The 2:30 p.m. Staff Working Group Meeting 452
    - (ii) The Late Afternoon Lands Division Meeting 455
- D. Faced with the Dingell Subcommittee Request for Interviews of EPA Employees, the Department Discusses Opening a Criminal Investigation of Rita Lavelle; After the Criminal Division Refuses to Open an Investigation, the Executive Branch Imposes Unacceptable Conditions on the Interview Process
  - 1. Introduction 457
  - 2. Events Prior to January 27
    - (i) The Sudden Concern on January 26 About Possible Wrongdoing By Lavelle and the Source of the Concern 460
    - (ii) The Criminal Division Becomes Involved in the EPA Controversy 466
  - 3. The Events of January 27 467
    - (i) The 9:00 a.m. Staff Working Group Meeting 467
    - (ii) The 11:00 a.m. Meeting 472
    - (iii) The 4:15 p.m. Meeting at the White House 483
    - (iv) The 5:30 p.m. Lands Division Meeting 484
  - 4. The Events of January 28
    - (i) The Late Morning Meeting With EPA 485
    - (ii) Preparation of Draft Responses to the Dingell Subcommittee Letters of January 14 and January 25 487
  - 5. The Events of January 31
    - (i) Gailis' Contacts With OLC and Dolan 491
    - (ii) The 1:30 p.m. Lands Division Meeting 492
    - (iii) The OLC—Lands Meeting 493
    - (iv) Walker and Ramsey Telephone Perry and Leifer Speaks With Gailis 494
    - (v) Dinkins and McGrath Meet With Gorsuch and Other EPA Officials 494
    - (vi) EPA's Preparation of a New Draft Response to the Dingell Subcommittee Request for Interviews 496
  - 6. The Events of February 1
    - (i) The Department Receives EPA's Draft Response to the Dingell Subcommittee and OLC Reacts Negatively 497
    - (ii) White House Involvement and Perry's Decision Not to Send His Letter Permitting EPA Employee Interviews 498
    - (iii) The 4:30 p.m. Justice Department Meeting 498
  - 7. The Events of February 2
    - (i) The Executive Branch Imposes Conditions on the Dingell Subcommittee's Interviews of EPA Employees 502
    - (ii) White House Involvement with the Interview Conditions 504
    - (iii) EPA's Response to the Request for Interviews 505
    - (iv) The Dingell Subcommittee's Reaction to the Imposition of Interview Conditions 506
- E. The "Discovery" by the Executive Branch of References to Possible Political Manipulation of the Superfund in the Documents Withheld From Congress 507
  - 1. The "Discovery" by the Justice Department of Political References and Suggestions of Wrongdoing in the Withheld Documents

Page
- (i) Malson Re-Reviews the Withheld Documents and Finds the Political References 510
- (ii) The Immediate Aftermath of Malson's Re-Review 513
- (iii) Senior Department Officials Learn that the Withheld Documents Contain Political References and Suggestions of Political Manipulation of Superfund: The Events of February 7-10, and the Referral of the Documents to the Criminal Division 516
  - (a) The Events of February 9 521
  - (b) The Events of February 10 527
  - (c) Subsequent Meetings 533
- 2. The White House Counsel's Office Is Advised by the Justice Department of References to the Possible Political Manipulation of Superfund in the Withheld Documents 534
- 3. The Failure of the Executive Branch to Provide the Withheld Documents Suggesting Wrongdoing to Congress 535
- 4. The "Discovery" by EPA of Political References and Suggestions of Wrongdoing in the Withheld Documents 537
- 5. The Events of February 25
  - (i) Events at EPA 541
  - (ii) Events at the Department of Justice: Perry and Yamada Bring the Referral Package to the Department 543
  - (iii) Events Later on February 25: Gorsuch Presses for the Release of the Documents 545
- 6. February 28: Heidi Hughes Appears Before the Dingell Subcommittee in Executive Session and, After Initial Resistance by Schmults and Hauser, Provides Her Notes 546

F. The Criminal Division Opens an Investigation Concerning Activities at EPA and Shares Information About the Investigation with the Lands Division 548
- 1. Gorsuch's Referrals of Possible Misconduct to the Department of Justice 550
- 2. The White House Pledges Support for a Criminal Investigation of EPA 551
- 3. The Criminal Division Opens an Investigation 552
- 4. The Criminal Division Focuses on the Contents of Documents Withheld Under the Privilege Claim and Allegations of Political Manipulation of Superfund 554
- 5. Lands' Relation with the Criminal Division
  - (i) The Department Finally Decides on Lands' Proper Role 554
  - (ii) Lands' Contacts with the Criminal Division About the Withheld Documents 555
  - (iii) Evidence that the Lands Division Considered Opening Its Own Investigation of EPA 560

G. The Department Negotiates a Settlement with the Levitas Subcommittee 561
- 1. The Initial Decision to Explore Settlement of the Dispute 561
- 2. The Working Group Meeting of February 4 562
- 3. EPA's Concerns in the Wake of the Court Decision 564
- 4. Department Options Papers 565
- 5. The February 7 Meeting Among the Assistant Attorneys General 565
- 6. EPA Seeks to Participate in the Negotiations with Congress 568
- 7. The Executive Branch Chooses a Negotiating Team 569
- 8. February 11: The Meeting of the Negotiating Team 573
- 9. February 12-18: The Negotiating Sessions 573
- 10. Schmults and Dinkins Meet with Gorsuch and Other EPA Officials 576

H. Gorsuch's February 1983 Contacts with the White House: Lavelle Is Fired; Gorsuch Raises the Issue of a Pardon and Seeks the Release of All Withheld Documents
- 1. Lavelle Is Fired 577
- 2. Gorsuch Raises the Issue of a Pardon 579
- 3. Gorsuch's Continuing Attempts to Convince the President and White House Officials to Release the Withheld Documents 580

I. February 25: Gorsuch Meets with the Attorney General for the First and Only Time During the Controversy 583

Page
J. The Department of Justice Withdraws From Representing Gorsuch and EPA 585
K. The Settlement Negotiations with the Dingell Subcommittee 596
L. Epilogue 600

VIII. THE JUDICIARY COMMITTEE INVESTIGATION AND THE DEPARTMENT'S EFFORTS TO BLOCK IT

A. Summary 603
B. The Procedural History of the Committee's Efforts to Gather Information
  1. Department of Justice 605
  2 United States Attorney For the District of Columbia 610
  3. Congressional Committees and Offices 611
  4. Environmental Protection Agency 611
  5. White House 611
C. The Department's Efforts to Block the Judiciary Committee's Inquiry 612
  1. The Judiciary Committee's Initial Request Letters and the Department's Responses 612
  2. Olson's March 10, 1983 Testimony Before the Subcommittee on Monopolies and Commercial law 617
    (i). Olson's Testimony on March 10 617
      (a) The Testimony on Whether OLC Furnished Written Legal Advice to the Civil Division 618
      (b) The Testimony on Presidential Review of the Withheld Documents 620
      (c) The Testimony and Response to Chairman Rodino's Question About Document Production 623
      (d) The Testimony About EPA's Willingness to Turn Over the Withheld Superfund Documents That Were Subject to the Privilege Claim 627
      (e) The Testimony on Unanimity 630
      (f) The Testimony on Department Options Papers 633
    (ii) The Reaction to Olson's Testimony at the Department 636
    (iii) The Planning of Olson's Testimony 638
  3. The Withholding of Documents
    (i) Procedural History 640
    (ii) The Judiciary Committee's Inquiry 644
      (a) The Department's Understanding of the Committee Requests 645
      (b) The Handwritten Notes and Chronologies Were Gathered For Review by the Judiciary Committee and Then Removed From the Materials Made Available; Dinkins, Olson and Perhaps McGrath Reviewed At Least Some Documents Before the Judiciary Committee Arrived 645
        [1] Lands Division—the "Red-Flagging" of Documents 646
        [2] Civil Division 649
        [3] OLC 650
      (c) Who Made the Decision to Withhold Documents, Why Was It Made and Why Was the Committee Not Advised? 650
  4. The Department's Naked Refusal to Supply Relevant Documents 655
  5. The Department's Lack of Accountability and Its Refusal to Supply a Statement That It Furnished All Responsive Documents 661
    (i) The Committee's Attempts to Obtain Assurances That the Department Produced All Responsive Documents... 666

ADDITIONAL, DISSENTING, AND SUPPLEMENTAL VIEWS 669

APPENDIX 1: *Individual Documents Cited In The Report* 805
Memorandum for the Heads of Executive Departments And Agencies from President Richard Nixon, on Establishing A Procedure To Govern Compliance With Congressional Demands for Information, March 24, 1969 807

BEST COPY AVAILABLE

Page
Letter from Lloyd Cutler to Hon. Antonin Scalia, December 12, 1975, attaching Memorandum on Availability of a Civil Forum to Challenge a Congressional Subpoena or Contempt Citation, December 9, 1975 809
Memorandum from Alice Daniel to All Civil Division Attorneys, on Asserting Claims of Official Governmental Privilege in Litigation, undated, attaching Memorandum on Official Governmental Privileges: Guidelines and Procedures for Their Assertion in Litigation, November 1980 845
Letter from Anne Gorsuch to Honorable John Dingell, December 24, 1981 878
Handwritten Notes of Heidi Hughes, August 30, 1982 879
Handwritten Notes of Deborah Dalton, August 31, 1982 881
Handwritten Notes of Heidi Hughes, September 7, 1982 (pre-meeting) 882
Handwritten Notes of Frank Biros, September 7, 1982 (pre-meeting) 883
Handwritten Notes of Ann Strickland, September 7, 1982 (pre-meeting) 884
Handwritten Notes of Deborah Dalton, September 7, 1982 (meeting) 886
Handwritten Notes of Kathy Summerlee, September 14, 1982 890
Letter from Elliott Levitas to Honorable Anne Gorsuch, September 15, 1982 892
Letter from John Dingell to Honorable Anne Gorsuch, September 17, 1982, with attachment 894
Memorandum from Winston Haythe to Robert Perry, on Request for Documents by Dingell's Subcommittee, September 24, 1982 899
Memorandum from Richard Mays to Robert Perry and Michael Brown, on Request by Congressmen Levitas and Dingell for Information Relative to Case Names and Responsible Parties, September 24, 1982 900
Memorandum from Steve Leifer and Barbara Elkus to Regional Counsels, *et al.*, on Request for Information From the Subcommittee on Oversight and Investigations, September 27, 1982 903
Handwritten Notes of Mary Walker, September 28, 1982 905
Handwritten Notes of Mark Rotenberg, September 28 and 29, 1982 906
Handwritten Notes of Mary Walker, September 29, 1982 (pre-meeting) 907
Handwritten Notes of Richard Mays, September 29, 1982 (pre-meeting and meeting) 908
Handwritten Notes of Mary Walker, September 29, 1982 (meeting) 909
File Memoranda of Marti Downie, Sante Esposito, and Bob Prolman, on Meeting With Justice and EPA Officials, September 29, 1982 910
Letter from Robert Perry to Honorable John Dingell, October 1, 1982 917
Handwritten Notes of Alfred Regnery, undated [October 1, 1982] 919
Memorandum from Alfred Regnery to Mary Walker, on Subcommittee on Investigations and Oversight of House Public Works Committee Requests for EPA Superfund Documents, October 5, 1982 922
Telephone Log of Ann Strickland, October 5, 1982 925
Handwritten Notes of Laurel Malson, October 6, 1982 926
Letter from Robert Perry to Honorable Elliott Levitas, October 7, 1982 (with drafts and other material prepared from October 1 to October 5, 1982) 927
Memorandum to the File from Bob Prolman, on Access to EPA Files, October 7, 1982 942
File Memorandum of Paul Yates, on October 1 and 8 Meetings with EPA Officials, October 8, 1982 944
File Memorandum of Marti Downie, on October 8 Meeting with EPA Officials, October 8, 1982 947
Letter from John Dingell to Robert Perry, October 8, 1982 950
Letter from Robert Perry to Larry Simms, October 8, 1982 952
Letter from Robert Perry to Honorable John Dingell, October 8, 1982 953
Document Review Notes of Laurel Malson, October 10, 1982 954
Handwritten Note from Larry [Simms] to Laurel [Malson], Monday, [October 11, 1982] 959
Handwritten Notes of Carol Dinkins, October 12, 1982 960
Letter from Robert Perry to Honorable Elliott Levitas, October 12, 1982 961
Memorandum to the File from Bob Prolman, on Access to EPA Records; Meeting With U.S. EPA Officials, Friday October 1, 1982, October 12, [1982] 962
Draft Letter to Robert Perry, undated [approximately October 12, 1982] 965
Handwritten Note from LLS [Simms] to Al [Regnery], October 13, [1982], with attachment 967
Letter from Alfred Regnery to Michael Barrett, undated [received October 13, 1982] 969
Handwritten Notes of Richard Mays, October 14, 1982 970
Handwritten Notes of Richard Frandsen, October 14, 1982 971

Page

List of Withheld Documents Provided By Regnery to Frandsen, October 14, 1982 976
Letter from Michael Barrett to Alfred Regnery, October 14, 1982 980
Letter from John Dingell to Honorable Anne Gorsuch, October 14, 1982 982
Letter from Rita Lavelle to Honorable John Dingell, October 14, 1982 983
Handwritten Notes of Steve Ramsey, October 15, 1982 984
Handwritten Notes of Carol Dinkins, October 15, 1982 (meeting) 985
Handwritten Notes of Steve Ramsey, October 15, 1982 (meeting) 986
Letter from Robert McConnell to Honorable John Dingell, October 18, 1982 988
Handwritten Notes of Fred Stiehl, October 18, 1982 992
Subpoena Directed to Honorable Anne Gorsuch from Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, served October 21, 1982 993
Memorandum from Michael Brown to John Daniel, on Subpoena from the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce (Representative Dingell), October 21, 1982 995
Handwritten Notes of Carol Dinkins, October 21, 1982 996
Handwritten Notes of Steve Ramsey, October 21, 1982 998
Handwritten Notes of Art Brill, October 21, 1982 1000
Handwritten Notes of Carol Dinkins, October 22, 1982 1001
Handwritten Notes of Steve Ramsey, October 22, 1982 1002
Selected List of Receipts & Expenditures, Federal Election Commission, for Honorable John Dingell and Honorable Michael Synar, October 22 and 23, 1982, and Handwritten List of Generators at Berlin and Farro and Tar Creek Hazardous Waste Sites, undated 1003
Handwritten Notes of Steve Ramsey, October 24, 1982 1013
Letter from Robert McConnell to Honorable John Dingell, October 25, 1982 1014
Memorandum for the President from Theodore Olson, on Assertion of Executive Privilege in Response to Subpoena to Anne M. Gorsuch, Administrator, Environmental Protection Agency—Issued By Subcommittee on Oversight and Investigations of the Energy and Commerce Committee of the House of Representatives of the United States, October 25, 1982, with attachments 1018
Drafts of Olson's October 25 Memorandum to the President and McConnell's October 25 Letter to Dingell, found in the files of EPA Enforcement Counsel Michael Brown 1047
Letter from Robert Perry to Michael Barrett, October 25, 1982 1076
Note for Larry Simms from the White House, October 26, 1982, with attachments 1078
Article from *Washington Post*, October 27, 1983, page A 17, col. 1 1080
Letter from Robert Perry to Michael Barrett, October 27, 1982 1081
Letter from Michael Barrett to Robert Perry, October 28, 1982 1083
Handwritten Notes of Steve Ramsey, October 29, 1982 1085
Draft Affidavit for Michael Brown Concerning Meeting with Robert Prolman on October 29, 1982, undated 1088
File Memoranda of Sante Esposito and Bob Prolman, on Meeting With EPA and the Department of Justice on October 29, 1982, November 2, 1982 1092
Memorandum from Theodore Olson to Robert McConnell, November 3, 1982, with attachment 1100
Memorandum from President Ronald Reagan for the Heads of Executive Departments and Agencies, on Procedures Governing Responses to Congressional Requests for Information, November 4, 1982 1106
Handwritten Record of Telephone Conversation With Mary Walker, prepared by Steve Leifer, November 5, 1982 1109
Response by Theodore Olson to *Washington Post* Article, November 13, 1982, page A 17, col. 1, with drafts of response dated October 27, 1982, October 28 [,1982], and November 8 [,1982] 1110
Memorandum from Robert Perry to OLEC Personnel, on Congressional Access to Sensitive Enforcement Documents, November 15, 1982 1127
Subpoena for Anne Gorsuch from the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation, served November 22, 1982 1129
Handwritten Notes of Michael Brown, November 22, 1982 1131
Handwritten Notes of Richard Mays, undated [November 22, 1982] 1132
Memorandum from Robert Perry to the Administrator, on Agency Contacts With Representatives of Levitas Subcommittee, November 22, 1982 1133
Memorandum from Edward Kurent to Michael Brown, on Enforcement Sensitive Superfund Documents, November 23, 1982 1138

Page

Handwritten Note of Larry [Simms] to Mike [Brown], November 23, 1982, attaching draft letter from William French Smith to Honorable John Dingell, undated 1139

Handwritten Note from Larry [Simms] to Ed [Schmults], November 23, 1982, attaching draft letter from William French Smith to Honorable John Dingell, undated 1146

Memorandum from Anne Gorsuch to Assistant Administrator for Solid Waste and Emergency Response, *et al.*, on Response to Congressional Subpoena, November 24, 1982 1153

Memorandum to File from Paul Yates, on Service of Subpoena to Anne Gorsuch, November 24, 1982 1155

Handwritten Note from Glenn [Unterberger] to Kirk [Sniff], November 24, 1982 1157

Letter from Michael Brown to Honorable John Dingell, November 24, 1982 1159

Handwritten Notes of Thomas DeCair, November 24, 1982 1162

Letter from Robert McConnell to Michael Barrett, November 24, 1982, with attachment 1163

Memorandum from President Reagan for the Administrator, Environmental Protection Agency, November 30, 1982 1166

Letter from William French Smith to Honorable John Dingell, November 30, 1982 1168

Letter from William French Smith to Honorable Elliott Levitas, November 30, 1982 1176

Handout on Alleged Harms from Release of Enforcement Sensitive Material, November 30, 1982 (hand-dated) 1178

Typewritten Note from Theodore Olson to Mike [Brown], December 1, 1982, attaching List of Alleged Harms From Release of Enforcement Sensitive Information 1179

Memorandum from James Christy to Minority Members, Dingell Subcommittee, on Friday, December 3 Hearing on Refusal of EPA to Submit Hazardous Waste Enforcement Documents to Subcommittee on Oversight and Investigations, December 1, 1982 1182

Memorandum from Robert Perry to the Administrator, on National Priorities List Under CERCLA, December 1, 1982 1185

List of Enforcement Sensitive Documents Withheld from the Levitas Subcommittee, prepared and submitted in connection with the Levitas Subcommittee hearing on December 2, 1982 1187

Miscellaneous documents prepared by Larry Simms in connection with Simms' view of Perry's testimony before the Dingell Subcommittee on December 3, 1982 1191

Memorandum to the File from Bob Prolman, on Access to EPA Records; Subpoena of EPA Administrator and Records, December 3, 1982 1238

Memorandum for Robert McConnell from Theodore Olson, December 6, 1982... 1241

Memorandum from Laurel Malson to Theodore Olson, December 6, 1982 1242

Handwritten Notes of Michael Dolan, December 6, 1982 1246

Handwritten Notes of Mary Walker, December 6, 1982 1247

Handwritten Notes of Steve Ramsey, December 6, 1982 1249

Handwritten Notes of Michael Brown, December 6, 1982 1251

Memorandum Prepared by Dick Emory, on Response to Congressional Subpoena, December 6, 1982, attached to handwritten notes of December 3 [,1982] 1252

Letter from John Dingell to Robert Perry, December 7, 1982 1255

Handwritten Document Description Prepared by EPA Attorneys Jerry Schwartz and Jerome Muys, undated (prepared December 6 and 7, 1982), with marginal notes of Michael Brown 1259

Document Review Notes of Steve Ramsey, Mary Walker, and Carol Dinkins, December 8-14, 1982 1276

First pages of documents withheld from the Dingell Subcommittee, initialed by Ramsey, Walker and/or Dinkins, December 8-14, 1982 1282

Handwriten Notes of Betsy Grey, undated [between December 8 and December 15, 1982] 1333

Draft Statute entitled "An Act to confer jurisdiction upon the district court of the United States of certain civil actions brought by the House Committee on Public Works and Transportation, and for other purposes," undated (prepared by Larry Simms, December 1982) 1334

Letter from Marc Marks to Robert McConnell, December 8, 1982 1338

Page

Memorandum from Bob Prolman and Sante Esposito to Jack O'Hara, on Hazardous Waste Contamination of Water Resources; October 29, 1982 Meeting With EPA and Justice Department Officials, December 9, 1982 1340

Memorandum from Frederick Stiehl to Michael Brown, on Response to Congressional Subpoena, December 9, 1982 1342

Letter from Robert McConnell to Honorable Elliott Levitas, December 9, 1982. 1344

EPA Press Release, December 10, 1982 1350

Draft EPA Press Release, December 10, 1982 (with handwritten notes and reference to Alan Parker) 1353

Letter from Robert Perry to Honorable John Dingell, December 10, 1982 1357

Letter from Robert Perry to Honorable John Dingell, December 10, 1982 1358

Undated Task List of Mrs. Gorsuch (prepared December 11 or 12, 1982) 1367

Handwritten Notes of Michael Brown, December 12, 1982 1368

Memorandum from Fred Stiehl to All Staff, on Response to the November 16, 1982 Subpoena of the Subcommittee on Investigations and Oversight of the Public Works and Transportation Subcommittee, December 13, 1982 1371

Draft Certification to be signed by Theodore Olson, undated (prepared December 13, 1982) 1373

Memorandum from Sonia Crow to Anne Gorsuch, on Region 9 Response to Dingell Subcommittee Congressional/Subpoena, December 13, 1982 1374

Letter from Robert Perry to Honorable John Dingell, December 13, 1982, attaching Lavelle Certification on Stringfellow 1380

Memorandum from Robert Perry to Associate Administrator for Policy and Resource Management, *et al.*, on Procedures for Responding to Congressional Requests for Enforcement Sensitive Materials, December 13, 1982 1383

Memorandum from Robert Perry to Associate Enforcement Counsels, *et al.*, on Interim OLEC Procedures for Access to Enforcement Documents, December 13, 1982 1387

Description of Documents Withheld from the Dingell Subcommittee under Claim of Executive Privilege, with Certifications of Perry, Brown, Dinkins, Ramsey, Walker, Olson and Hauser, December 13 and 14, 1982 1390

Undated Task List from Gorsuch Lunch of December 14 [,1982], prepared by Michael Brown 1399

Typewritten Note from Bob Perry to Anne [Gorsuch], December 15, 1982 1400

Memorandum from Robert Perry to the Administrator, on Options in Response to Resolution of Contempt, December 15, 1982 (with drafts dated December 9 and 13, 1982) 1401

Letter from Leland Modesitt to Honorable Elliott Levitas, December 15, 1982 .. 1411

Handwritten Notes of Mark Rotenberg, December 15, 1982 1412

Handwritten Notes of Betsy Grey, December 15, 1982 1413

Proposal Regarding EPA Documents, undated (House proposal rejected by Executive Branch, December 16, 1982) 1418

Handwritten Notes of Carol Dinkins, December 16, 1982 1420

Handwritten Notes of Michael Dolan, December 16, 1982 1423

Handwritten Notes of Paul McGrath, undated [December 16, 1982] 1424

Department of Justice Press Release, December 17, 1982 1427

Article from *Washington Post*, December 18, 1982, page A 1, col. 1 1430

Handwritten Memorandum from Steve Leifer to Mike Brown, on Further Comments on Complaint, undated [approximately December 20, 1982] 1431

Handwritten Notes of Gerald Yamada, undated [December 20, 1982] 1433

Handwritten Notes of Betsy Grey, December 20, 1982 1434

Handwritten Notes of Steve Ramsey, December 20, 1982 1438

Handwritten Notes of Mary Walker, December 20, 1982 1442

Handwritten Notes of Lewis Wise, December 20, 1982 1443

Memorandum from Theodore Olson to Paul McGrath, on *United States of America*, v. *The House of Representatives, et al.*, December 20, [1982] (hand-dated) 1444

Handwritten Notes of Paul McGrath, undated [December 20, 1982] 1446

"Dear Colleague" Letter from Elliott Levitas, December 20, 1982, with attachment 1449

Article from *Wall Street Journal*, December 20, 1982, page 6, col. 1 1456

Handwritten Notes of Paul McGrath, undated [December 21, 1982] 1457

Handwritten Notes of John Daniel, December 21, 1982 1458

Handwritten Notes of Richard Willard, undated [December 21, 1982] 1459

Handwritten Notes of Carol Dinkins, December 22, 1982 1462

Handwritten Notes of Mary Walker, December 22, 1982 1465

Handwritten Notes of Marty Kaplan, December 22, 1982 1468

Page

Handwritten Notes of Marty Kaplan, December 22, 1982 1469
Handwritten Notes of Steve Ramsey, December 22, 1982 1471
Handwritten Notes of Anne Shields, undated [December 22, 1982] 1472
Routing and Transmittal Slip from [Steve] Ramsey to Mary [Walker], December 22, 1982 1478
Handwritten Notes of Michael Brown, December 23 [,1982] 1479
Letter from Gerald Yamada to Paul McGrath, December 23, 1982, with attachment 1480
Handwritten Notes of Gerald Yamada, undated [December 27, 1982] 1483
Handwritten Notes of John Daniel, December 27, 1982 1484
Letter from Stanley Harris to Honorable Thomas P. O'Neill, Jr., December 27, 1982 1486
Letter from Michael Barrett to Honorable Anne Gorsuch, December 27, 1982 .. 1488
Memorandum Prepared by Thomas Susman, on Issues Relating to the Proposed Amended Complaint in *United States* v. *House of Representatives* Raised in the December 27, 1982 Meeting With Department of Justice Attorney Lewis Wise, December 28, 1982 1491
Memorandum from Michael Moriarty to Robert Perry, on Considerations Regarding Addition to Anne Gorsuch as Party Plaintiff in *United States* v. *House of Representatives*, December 28, 1982 1497
Memorandum from Robert Perry to Anne Gorsuch, on Draft Amended Complaint in re *United States* v. *House of Representatives*, December 28, 1982 1503
Handwritten Notes of John Daniel, December 28, 1982 1505
Letter from Thomas Susman to Gerald Yamada, December 29, 1982, with attachment 1506
Letter from Gerald Yamada to Honorable Paul McGrath, December 29, 1982... 1510
Handwritten Note from Mary [Walker] to [Steve] Ramsey, January 3 [, 1983], attaching documents withheld from the Levitas Subcommittee 1512
Typed Note from Richard [Mays] to Gerry [Yamada], January 3, 1983 1536
Memorandum from Theodore Olson to Paul McGrath, on *United States* v. *House of Representatives, et al.*, January 3, 1983 1537
Letter from Thomas P. O'Neill, Jr., Speaker, to Stanley S. Harris, January 4, 1983 1539
Memorandum from Marshall Moriarty to Robert Perry, on Draft Summary Judgment Memorandum, Affidavit, and House Motion to Dismiss, January 4, 1983 1540
Handwritten Notes of John Daniel, January 4, 1983 1546
Memorandum from Theodore Olson to Paul McGrath, on Motion for Summary Judgment in Gorsuch Executive Privilege Litigation, January 5, 1983 1547
Letter from Robert Perry to Paul McGrath, January 5, 1982 [1983] 1557
Handwritten Notes of Betsy Grey, January 5, 1982 [1983] 1559
Handwritten Notes of Betsy Grey, January 5, 1982 [1983] 1562
Letter from Robert Perry to Paul McGrath, January 6, [1983] 1566
Memorandum from Robert Perry to Anne Gorsuch, on Administrator's Comments on Draft Amended Complaint, January 6, 1982 [1983] 1570
Memorandum from Theodore Olson to Paul McGrath, on Revised Draft of Summary Judgment Motion in *United States* v. *House of Representatives*, No. 82-3583 (D.D.C.), January 7, 1983 1573
Draft Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment, January 7, 1983 (hand-dated), with handwritten comments of Olson and others 1576
Declaration of Carol Dinkins in *United States of America* v. *House of Representatives of the United States*, filed January 10, 1983 (with drafts) 1658
Declaration of Robert Perry in *United States of America* v. *House of Representatives of the United States*, dated January 10, 1983, including exhibits (with draft) 1691
Draft of Exhibit G to Perry Declaration, from the files of Assistant Attorney General Theodore Olson 1769
Plaintiffs' Statement of Material Facts in *United States of America* v. *House of Representatives of the United States*, filed January 10, 1983 1783
Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendants' Motion to Dismiss in *United States of America* v. *House of Representatives of the United States*, filed January 10, 1983 1788
Handwritten Notes of Carol Dinkins, January 10, 1983 1872
Article from *Washington Post*, January 11, 1983, page A 2, col. 3 1873
Article from *Baltimore Sun*, January 11, 1983, page A 8, col. 1 1874

Page

Memorandum from Robert Perry to Anne Gorsuch, on DOJ Brief In Support of Summary Judgment, January 12, 1983 1875
Routing and Transmittal Slip from L [Laurel Malson] to Larry Simms, January 12, 1983 1877
Memorandum for Robert Perry from Richard Hauser, on Questions by House Subcommittee on Oversight and Investigations on Executive Privilege, January 13, 1983, with attachment 1879
Handwritten Notes of Greg Walden, January 13, 1983 1882
Letter from Robert Perry to Michael Barrett, January 14, 1983 1885
Reporting Form for Enforcement Sensitive Data Submittals from EPA Regional Offices, prepared by Winston Haythe, undated [January 14, 1983] 1892
Letter from John Dingell to Honorable Anne Gorsuch, January 14, 1983 1893
Handwritten Notes of Carol Dinkins, January 18, 1983 1897
Letter from Robert Perry to Paul McGrath, January 18, 1983, with attachment 1899
Routing and Transmittal Slip from Ted [Olson] to [Larry] Simms, *et al.*, January 19, 1983, with attachments 1904
Letter from Robert Perry to Honorable Paul McGrath, January 19, 1983 1917
Typewritten Note from Paul McGrath to Ken Starr, on White House Briefing on Gorsuch/Executive Privilege Matters, January 21, 1983 1918
Letter from James Howard and Elliott Levitas to Honorable Anne Gorsuch, January 25, 1983 1921
Letter from John Dingell to Honorable Anne Gorsuch, January 25, 1983 1923
Materials relating to the Executive Branch's response to Chairman Dingell's letter of January 14, 1983 1925
    1. Letter from Robert Perry to Honorable Carol Dinkins, January 25, 1983, with attachment 1926
    2. Draft letter to Honorable John Dingell, January 26, 1983, with covering memorandum to Robert Perry (prepared by Larry Simms) 1929
    3. Three draft responses prepared by Ann Gailis, January 26, 1983 1935
    4. Letter from Robert Perry to Honorable John Dingell, February 2, 1983 1949
Materials relating to the Executive Branch's response to Chairman Dingell's letter of January 25, 1983 1952
    1. Letter from Robert Perry to Honorable Carol Dinkins, January 26, 1983, with attachments 1953
    2. Four draft responses prepared by Ann Gailis, January 28, 1983 1956
    3. Draft letter to Honorable John Dingell and memorandum to prospective interviewees (prepared by Steve Leifer, January 31, 1983) 1964
    4. Letter from Robert Perry to Honorable John Dingell, February 2, 1983 1967
    5. Memorandum from Robert Perry to Addressees, on Information on Congressional Requests for Interviews with Agency Personnel, February 2, 1983 1969
Memorandum from Carol Dinkins to Rex Lee, *et al.*, on *United States of America and Anne M. Gorsuch, Administrator, Environmental Protection Agency* v. *The House of Representatives of the United States, et al.*, (D.D.C.), Civil Action No. 82-3583, January 26, 1983 1971
Handwritten Notes of Carol Dinkins, January 26, 1983 1975
Handwritten Notes of Greg Walden, January 26, 1983 1977
Handwritten Notes of Mary Walker, January 26, 1983 1981
Handwritten Notes of Mary Walker, January 26, 1983 (telephone call with Perry) 1983
Handwritten Notes of Carol Dinkins, January 26, 1983 1984
Handwritten Notes of Greg Walden, January 27, 1983 (Working Group) 1985
Handwritten Notes of Mary Walker, January 27, 1983 (Working Group) 1986
Handwritten Notes of Carol Dinkins, January 27, 1983 (meeting with Deputy Attorney General) 1987
Handwritten Notes of Mary Walker, January 27, 1983 (meeting with Deputy Attorney General) 1988
Handwritten Notes of Michael Dolan, January 27, 1983 (meeting with Deputy Attorney General) 1991
Handwritten Notes of Paul McGrath, undated (approximately January 27, 1983) 1993
Handwritten Notes of Lewis Wise, undated (approximately January 27, 1983) 1994
Handwritten Notes of Mary Walker, January 27, 1983 (Lands meeting) 1995
Handwritten Notes of Betsy Grey, January 27, 1982 [1983] 1996
Handwritten Notes of Mary Walker, between January 27-31, 1983 1997
Handwritten Notes of Richard Frandsen, January 28, 1983 1998

Page

Handwritten Note from Carol [Dinkins] to Ed Schmults, January 28, 1983, with attachment 2001
Memorandum from Robert Perry to Addressees, on Congressional Request for Interviews, January 28, 1983 2004
Handwritten Notes of Mary Walker, January 31, 1983 2005
Handwritten Notes of Carol Dinkins, January 31, 1983 2007
Handwritten Notes of Paul McGrath, undated [January 31, 1983] 2008
Memorandum from John Daniel to the Files, on Meeting regarding February 1 Hearing on Contempt Citation, January 31, 1983 2009
Handwritten Notes of Mary Walker, January 31, 1983 2011
Typed Note from Bob McConnell to Paul McGrath, February 1, 1983, attaching Memorandum from Robert McConnell to the File, on Conversation with Kirk O'Donnell, Counsel to the Speaker of the House, January 31, 1983 2012
Routing and Transmittal Slip from Laurel [Malson] to Larry Simms, February 1, 1983, with attachments 2016
Handwritten Notes of Lewis Wise, February 1, 1983 2021
Handwritten Notes of Greg Walden, February 1, 1983 2022
Handwritten Notes of Marty Kaplan, February 1, 1983 2024
Letter from Anne Gorsuch to Honorable Edward Schmults, February 2, 1983 2026
Record of Communication, prepared by Heidi Hughes, February 2, 1983 2028
Article from the *Baltimore Sun*, February 2, 1983, page A 12, col. 2 2029
Press Statement of Paul McGrath, February 3, 1983 2030
Handwritten Notes of Carol Dinkins, February 3, 1983 (meeting with Attorney General) 2031
Handwritten Notes of Carol Dinkins, February 3, 1983 (telephone call with Perry) 2033
Handwritten Notes of Mary Walker, February 3, 1983 2034
Handwritten Notes of Lewis Wise, February 3, 1983 2036
Handwritten Notes of Marty Kaplan, February 3, 1983 2037
Memorandum from Paul McGrath to William French Smith, *et al.*, on *Gorsuch Matter*, February 4, 1983 2040
Handwritten Notes of Lewis Wise, February 4, 1983 2041
Handwritten Notes of Mary Walker, February 4, 1983 2042
Handwritten Notes of Marty Kaplan, February 4, 1983 2043
Memorandum to the Files from Marty Kaplan, on February 4 Meeting of the Working Group, February 7, 1983 2055
Selected Options Papers from Department of Justice Files, February 4–10, 1983 2060
Article from *Legal Times of Washington*, February 7, 1983, page 1 2111
Handwritten Notes of Carol Dinkins, February 7, 1983 2112
Handwritten Notes of Mary Walker, February 7, 1983 2117
Handwritten Notes of Henry Habicht, undated [February 7, 1983] 2121
Handwritten Notes of Steve Ramsey, February 7, 1983 2122
Handwritten Notes of Robert McConnell, February 7, 1983 2127
Handwritten Notes of Michael Dolan, January [February] 7, 1983 2130
Handwritten Notes of Lewis Wise, February 7, 1983 2131
Handwritten Notes of Greg Walden, undated [February 7, 1983] 2132
Memorandum from Robert McConnell to Paul McGrath, on Gorsuch Matter, February 7, 1983 2136
Handwritten Notes of Carol Dinkins, February 8, 1983 2137
Memorandum from Marty Kaplan to Ann Gailis, on Redaction of Subpoenaed Documents, February 8, 1983 2138
Letter from John Dingell to Honorable Anne Gorsuch, February 8, 1983 2139
Handwritten Notes of Robert McConnell, March [February] 8, 1983 2142
Letter from Anne Gorsuch to Honorable Edward Schmults, February 8, 1983 2144
Article from *Washington Post*, February 9, 1983, page A 1, col. 1 2146
Article from *Washington Post*, February 9, 1983, page A 2, col. 1 2148
Handwritten Notes of Carol Dinkins, February 9, 1983 2149
Handwritten Notes of Mary Walker, February 9, 1983 2153
Handwritten Notes of Steve Ramsey, February 9, 1983 2154
Handwritten Notes of Marty Kaplan, February 9, 1983 2156
Handwritten Notes of Lewis Wise, February 9, 1983 2164
Handwritten Notes of Greg Walden, February 9, 1983 2166
Handwritten Notes of Steve Ramsey, February 9, 1983 (options meeting) 2169
Routing and Transmittal Slip from [Larry Simms] to Ted Olson, February 10, 1983, with attachment 2171
Handwritten Note from Ted [Olson] to Lowell [Jensen], February 10, 1983 2184

Page

Memorandum from Larry Simms to Theodore Olson, on Transmittal of Subpoenaed Documents Withheld from Levitas and Dingell Subcommittees to the Criminal Division, February 10, 1983 (two versions) 2185
Letter from Anne Gorsuch to Honorable Edward Schmults, February 10, 1983 2187
Handwritten Notes of Carol Dinkins, February 10, 1983 2188
Handwritten Notes of Robert McConnell, February 10, 1983, with attachment 2190
Letter from John Daniel to Honorable John Dingell, February 10, 1983 2192
Handwritten Notes of Carol Dinkins, February 14, 1983 2194
Letter from Anne Gorsuch to Honorable Edward Schmults, February 14, 1983 2195
Letter from Edward Schmults to Honorable Anne Gorsuch, February 15, 1983 2197
Letter from Fred Fielding to Honorable William French Smith, February 15, 1983 2198
Handwritten Notes of Carol Dinkins, February 17, 1983 2199
Article from *Washington Post*, February 17, 1983, page A 1, col. 1 2202
Article from *Washington Post*, February 18, 1983, page A 1, col. 1 2204
Memorandum from Anne Gorsuch to [prospective EPA interviewees], on Discussing Enforcement-Sensitive Documents, February 18, 1983 2206
Outline of briefing for witnesses, prepared by Lee DeHihns, undated [February 18, 1983] 2207
Handwritten Notes of Lee DeHihns, February 18, 1983 2209
Memorandum from Lowell Jensen to Edward Schmults, February 18, 1983, attaching Routing and Transmittal Slip from John Keeney to [Lowell] Jensen, February 18, 1983, attaching Memorandum for John Keeney from Fred Fielding, on EPA Investigation, February 18, 1983 2210
Memorandum of Understanding Between the Committee on Public Works and Transportation and the Department of Justice Concerning Documents Subpoenaed From Environmental Protection Agency, February 18, 1983 2213
Handwritten Notes of John Daniel, February 18, 1983 2218
Memorandum from Robert Perry to EPA Employees Subpoenaed By Congressional Committees, on Testimony Regarding Enforcement-Sensitive Documents, February 22, 1983 2220
Memorandum from "Hedda" to "Charles", February 22, 1983 2222
Routing and Transmittal Slip from Ted [Olson] to [Larry] Simms, February 22, 1983, with attachments 2223
Unfinished Executive Privilege Business, prepared by Theodore Olson, undated [February 22, 1983] 2250
Memorandum from Honorable John Dingell to Members, Subcommittee on Oversight and Investigations, on EPA Investigation, February 23, 1983, with attachment 2254
Letter from Robert Whittaker, James Broyhill, Thomas Bliley, and Michael Oxley to the President, February 24, 1983 2261
Handwritten Notes of John Daniel, February 24, 1983 2263
Letter from Anne Burford to Honorable Edward Schmults, February 25, 1983 2270
Handwritten Notes of Kenneth Starr, February 25, 1983 2277
Handwritten Note from Mary [Walker] to Carol [Dinkins], February 28, 1983 2280
Handwritten Notes of John Daniel, February 28, 1983, (telephone calls with Hauser) 2282
Handwritten Notes of Steve Ramsey, February 28, 1983 2284
Handwritten Notes of John Daniel, February 28, 1983 (telephone call with Fuller) 2286
Memorandum from Marty Kaplan to Steve Ramsey, on Allegations being Looked at in Gorsuch Matter, March 1, 1983 2287
Letter from Robert Perry to Honorable Elliott Levitas, March 1, 1983 2288
Handwritten Notes of Steve Ramsey, March 1, 1983 2291
Typewritten Note from Theodore Olson to Ken Starr, March 1, 1983, attaching memorandum on EPA—Department of Justice relationship, prepared by Janis Sposato, undated 2292
Handwritten Notes of John Daniel, March 1, 1983 2296
Draft letter to Honorable Peter Rodino, March 2, 1983 2298
Letter from Robert Perry to Carol Dinkins, March 2, 1983 2310
Handwritten Notes of Marty Kaplan, March 2, 1983 2311
Handwritten Notes of John Daniel, March 2, 1983 (12:15 p.m. telephone call with Fuller) 2314
Handwritten Notes of John Daniel, March 2, 1983 (1:35 p.m. telephone call with Fuller) 2316

Page

Memorandum from Lowell Jensen to the Director, Federal Bureau of Investigation, on EPA Investigation, March 2, 1983 ... 2318
Handwritten Notes of John Daniel, March 3, 1983 ... 2319
Handwritten Notes of Leland Modesitt, March 3, 1983 ... 2326
Routing and Transmittal Slip from [Ann Gailis] to Carol Dinkins, March 3 [,1983], attaching copies of Heidi Hughes' notes ... 2331
Letter from Edward Schmults to Honorable Anne Burford, March 4, 1983 ... 2343
Memorandum from Paul McGrath to Theodore Olson, on Rodino Request of February 24, 1983, March 4, 1983, with attachment ... 2345
Article from *Washington Post*, March 5, 1983, page A 1, col. 2 ... 2350
Draft Memorandum of Understanding Between the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, and the Environmental Protection Agency Concerning Documents Subpoenaed From The Environmental Protection Agency, undated ... 2352
Draft letter from Robert McConnell to Honorable Peter Rodino, March 6, 1983 ... 2354
Letter from Edward Schmults to Honorable Anne Burford, March 7, 1983 ... 2366
Handwritten Notes of Marty Kaplan, March 8, 1983 ... 2368
Handwritten Notes of Carol Dinkins, March 8, 1983 ... 2373
Letter from Anne Burford to Honorable Edward Schmults, March 9, 1983, with attachments ... 2375
Memorandum from Ann Gailis to Carol Dinkins, on Congressional Request for Interviews, March 9, 1983 ... 2384
Memorandum from Robert McConnell to William French Smith, on Tuesday Authorization Hearing before the House Judiciary Committee, March 10, 1983 ... 2387
Handwritten Notes of Mark Rotenberg, March 10, 1983 ... 2389
Memorandum from Greg Walden to Michael Dolan, March 11, 1983 ... 2391
Excerpts from news conference held by Anne Burford on March 10, 1983, reprinted in *New York Times*, March 11, 1983, page A 19, col. 1 ... 2392
Handwritten Note from Janis [Sposato] to Ted [Olson], undated, attaching Routing and Transmittal Slip from Ted [Olson] to Janis [Sposato], March 16, 1983, attaching Memorandum on EPA—Department of Justice Relationship, undated ... 2394
Article from *Wall Street Journal*, March 18, 1983, page 29, col. 1 ... 2402
Memorandum from John Glover to Assistant Attorney General, Criminal Division, on EPA Investigation, March 25, 1983 ... 2404
Handwritten Notes of Marty Kaplan, March 29, 1983 ... 2405
Handwritten Notes of Marty Kaplan, undated, attaching Memorandum from Marty Kaplan to Stephen Ramsey, on Preparation for Judiciary Committee Review—Personal Notes, April 1, 1983 ... 2408
Form 302 Memorandum of FBI Interview with Richard Hauser, June 14, 1983 ... 2410
Memorandum from Marty Kaplan to Henry Habicht, *et al.*, on House Judiciary Committee Request for Documents, August 11, 1983 ... 2413
Memorandum from Henry Habicht to Robert McConnell, on House Judiciary Committee Request for Documents, August 11, 1983 (hand-dated) ... 2414
Excerpts from article from *Washington Post*, September 25, 1983, page A 1, col. 1 ... 2416
Memorandum from Timothy Finn to Edward Schmults, on EPA Hearing, September 26, 1983, with attachments ... 2417
Letter from John Dingell to Theodore Olson, October 4, 1983 ... 2461
Memorandum to Files from Larry Simms, on Alleged Attendance at Meeting on December 12, 1982 with Administrator Burford of the EPA and Other Persons, October 6, 1983 ... 2463
Routing and Transmittal Slip from Ted [Olson] to [Larry] Simms and [Laurel] Malson, October 15, 1982 [1983], attaching draft letters to Honorable John Dingell, undated ... 2464
Letter from Robert McConnell to Honorable John Dingell, October 31, 1983 ... 2501
Letter from John Dingell to Theodore Olson, November 7, 1983 ... 2527
Letter from Robert McConnell to Honorable John Dingell, November 18, 1983. 2529
Memorandum to Files from Larry Simms, on Possible Testimony of Robert Perry at Trial of Rita Lavelle, December 6, 1983 ... 2533
Memorandum from Michael Dolan to Theodore Olson, *et al.*, on House Judiciary Committee Inquiry into EPA Affair, April 17, 1984 ... 2538
Article from *Washington Post*, April 17, 1984, page A 19, col. 1 ... 2540
Memorandum from Theodore Olson to Lowell Jensen, May 25, 1984 ... 2541

Page

Memorandum for the Attorney General from Theodore Olson, on Whether the United States Attorney Must Prosecute or Refer to a Grand Jury a Citation for Contempt of Congress Concerning an Executive Branch Official Who Has Asserted Claim of Executive Privilege on Behalf of the President of the United States, May 30, 1984 2544
Memorandum from Michael Dolan to Robert McConnell, on Chairman Rodino's May 24th Letter on EPA Disclosure, May 30, 1984 2625
Memorandum from Robert McConnell to Lowell Jensen, on House Judiciary Inquiry into Department Handling of EPA Documents, June 27, 1984 2627
Letter from Theodore Olson to James Schweitzer, January 9, 1985, with attachment 2629
Document Examination Reports, Document Examiner Associates, March 29 and April 4, 1985 (with follow-up letter of April 16, 1985) 2634
Materials relating to the delay of Robert McConnell in providing a written certification to the Judiciary Committee on document production 2640
  1. Letter from David Zerhusen to Jonathan Cuneo, July 24, 1985 2641
  2. Letter from Robert McConnell to Jonathan Cuneo, September 9, 1985 2642
  3. Letter from Peter Rodino to David Zerhusen, September 13, 1985 2643
  4. Letter from David Zerhusen to Honorable Peter Rodino, September 17, 1985 2649
  5. Memorandum to Peter Rodino from the Staff, September 26, 1985 2654
  6. Letter from Robert McConnell to Elaine Mielke, November 15, 1985 2660
  7. Letter from David Zerhusen to Elaine Mielke, November 18, 1985 2661
Letter from David Zerhusen to James Schweitzer, September 16, 1985 2662

APPENDIX 2: *Handwritten Log of Ann Gailis, January 25, 1983 to September 26, 1983* 2667

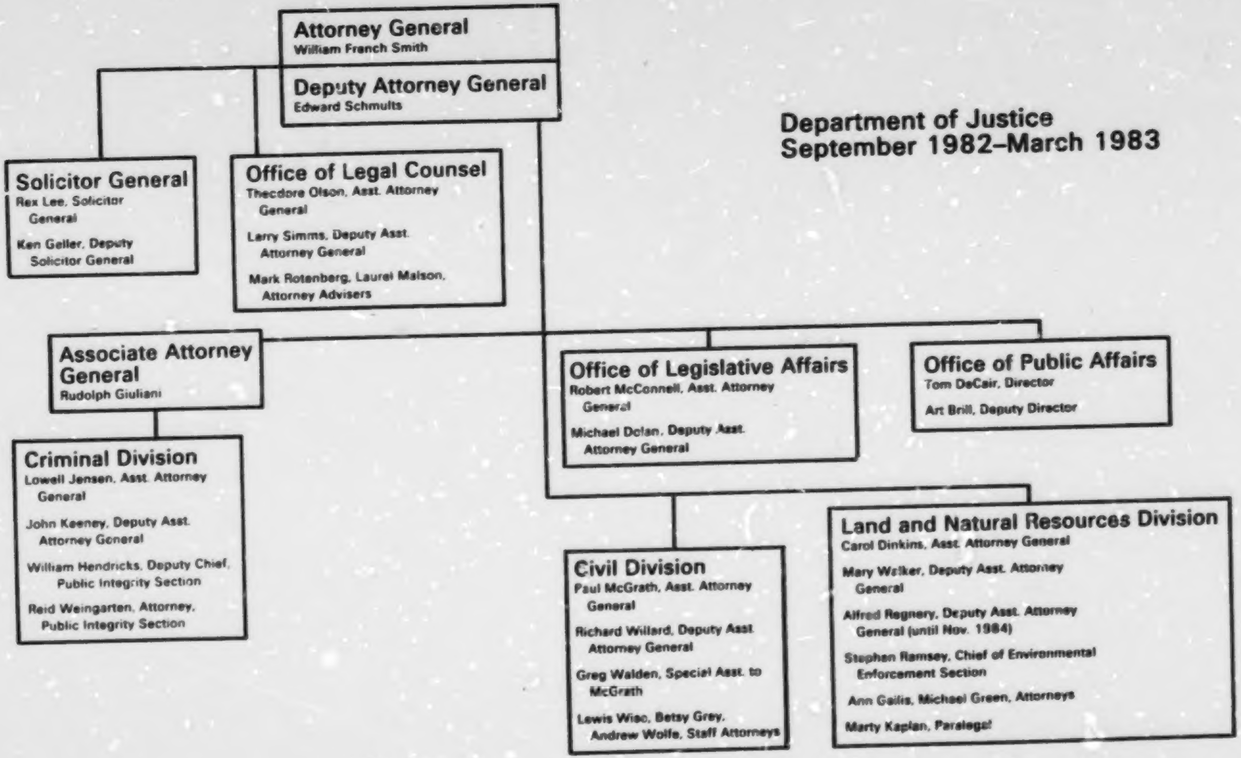
APPENDIX 3: *Chronologies and Calendars* 2871
Chronology of Significant Events, September 15, 1982 to March 9, 1983 (Department chronology) 2873
Chronology-Gorsuch Matter, September 15, 1982 to March 2, 1983 (Lands chronology) 2876
Events Leading to Levitas Agreement and Events After Levitas Agreement, February 1, 1983 to March 3, 1983, prepared by John Daniel (Daniel chronology) 2884
Chronology of Events Relative to the Claim of Executive Privilege as to Enforcement-Sensitive Documents of the U.S. Environmental Protection Agency, September 14, 1982 to March 22, 1983, prepared by Richard Mays (Mays chronology) 2902
Excerpts from the Handwritten Journal of Richard Mays, January 24, 1983 to March 10, 1983 (Mays journal) 2914
Letter from Paul McGrath to James Schweitzer, December 28, 1984 (McGrath calendar) 2935
Letter from David Zerhusen to James Schweitzer, February 5, 1985 (McConnell calendar) 2937

APPENDIX 4: *Correspondence Between the House Committee on the Judiciary and the Department of Justice* 2941
Letter from Peter Rodino to Honorable William French Smith, February 24, 1983 2943
Letter from Peter Rodino to Honorable William French Smith, March 2, 1983 2946
Letter from Robert McConnell to Honorable Peter Rodino, March 8, 1983 2948
Letter from Robert McConnell to Honorable Peter Rodino, March 8, 1983 2951
Letter from Robert McConnell to Honorable Peter Rodino, March 9, 1983 2959
Letter from Peter Rodino to Honorable William French Smith, July 21, 1983 2980
Letter from Robert McConnell to Honorable Peter Rodino, August 10, 1983 2993
Letter from Lowell Jensen to Honorable Peter Rodino, May 18, 1984 2994
Letter from Peter Rodino to Honorable William French Smith, May 24, 1984 3000
Letter from William French Smith to Honorable Peter Rodino, June 7, 1984 3005
Letter from Peter Rodino to Honorable William French Smith, June 25, 1984 3007
Letter from Peter Rodino to Honorable William French Smith, August 22, 1984 3008
Letter from John Keeney to Honorable Peter Rodino, August 24, 1984 3065
Letter from Peter Rodino to Honorable William French Smith, September 21, 1984 3067
Letter from Peter Rodino to Honorable William French Smith, October 26, 1984 3070

Page
Letter from Lowell Jensen to Honorable Peter Rodino, October 30, 1984 3074
Memorandum to Peter Rodino from the Staff, November 2, 1984 3078
Letter from Peter Rodino to Honorable William French Smith, November 8, 1984 3090
Letter from Lowell Jensen to Honorable Peter Rodino, November 19, 1984 3095
Letter from Paul McGrath to Honorable Peter Rodino, November 29, 1984 3098
Letter from Peter Rodino to Honorable Paul McGrath, December 5, 1984 3100
Letter from Paul McGrath to Honorable Peter Rodino, December 10, 1984 3103
Letter from Peter Rodino to Honorable William French Smith, December 21, 1984 3104
Letter from Lowell Jensen to Honorable Peter Rodino, March 5, 1985 3108
Letter from Peter Rodino to Honorable Edwin Meese, March 21, 1985 3110
Letter from Peter Rodino to Honorable Lowell Jensen, March 26, 1985 3112
Letter from Lowell Jensen to Honorable Peter Rodino, April 12, 1985 3116

APPENDIX 5. *Individuals Interviewed By The House Committee on the Judiciary* 3121

BEST COPY AVAILABLE


Department of Justice
September 1982–March 1983

Attorney General
William French Smith
Deputy Attorney General
Edward Schmults
Solicitor General
Rex Lee, Solicitor General
Ken Geller, Deputy Solicitor General
Office of Legal Counsel
Theodore Olson, Asst. Attorney General
Larry Simms, Deputy Asst. Attorney General
Mark Rotenberg, Laurel Malson, Attorney Advisers
Associate Attorney General
Rudolph Giuliani
Office of Legislative Affairs
Robert McConnell, Asst. Attorney General
Michael Dolan, Deputy Asst. Attorney General
Office of Public Affairs
Tom DeCair, Director
Art Brill, Deputy Director
Criminal Division
Lowell Jensen, Asst. Attorney General
John Keeney, Deputy Asst. Attorney General
William Hendricks, Deputy Chief, Public Integrity Section
Reid Weingarten, Attorney, Public Integrity Section
Civil Division
Paul McGrath, Asst. Attorney General
Richard Willard, Deputy Asst. Attorney General
Greg Walden, Special Asst. to McGrath
Lewis Wise, Betsy Grey, Andrew Wolfe, Staff Attorneys
Land and Natural Resources Division
Carol Dinkins, Asst. Attorney General
Mary Walker, Deputy Asst. Attorney General
Alfred Regnery, Deputy Asst. Attorney General (until Nov. 1984)
Stephen Ramsey, Chief of Environmental Enforcement Section
Ann Gailis, Michael Green, Attorneys
Marty Kaplan, Paralegal

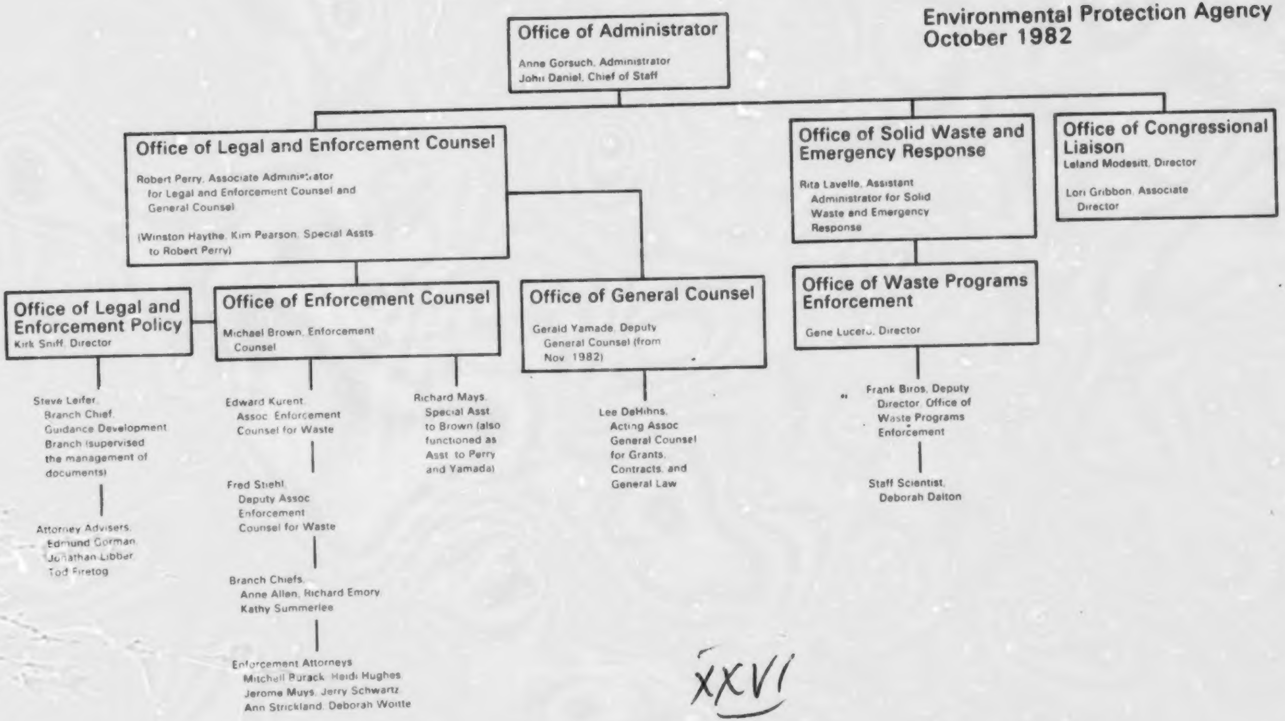
XXV

BLANK PAGE

BLANK PAGE

BLANK PAGE

Environmental Protection Agency
October 1982


Office of Administrator
Anne Gorsuch, Administrator
John Daniel, Chief of Staff
Office of Legal and Enforcement Counsel
Robert Perry, Associate Administrator for Legal and Enforcement Counsel and General Counsel
(Winston Haythe, Kim Pearson, Special Assts to Robert Perry)
Office of Solid Waste and Emergency Response
Rita Lavelle, Assistant Administrator for Solid Waste and Emergency Response
Office of Congressional Liaison
Leland Modesitt, Director
Lori Gribbon, Associate Director
Office of Legal and Enforcement Policy
Kirk Sniff, Director
Office of Enforcement Counsel
Michael Brown, Enforcement Counsel
Office of General Counsel
Gerald Yamade, Deputy General Counsel (from Nov. 1982)
Office of Waste Programs Enforcement
Gene Lucero, Director
Steve Leifer, Branch Chief, Guidance Development Branch (supervised the management of documents)
Attorney Advisers, Edmund Gorman, Jonathan Libber, Tod Firetog
Edward Kurent, Assoc. Enforcement Counsel for Waste
Fred Stiehl, Deputy Assoc. Enforcement Counsel for Waste
Branch Chiefs, Anne Allen, Richard Emory, Kathy Summerlee
Enforcement Attorneys, Mitchell Burack, Heidi Hughes, Jerome Muys, Jerry Schwartz, Ann Strickland, Deborah Woitte
Richard Mays, Special Asst to Brown (also functioned as Asst. to Perry and Yamada)
Lee DeHihns, Acting Assoc. General Counsel for Grants, Contracts, and General Law
Frank Biros, Deputy Director, Office of Waste Programs Enforcement
Staff Scientist, Deborah Dalton

XXVI

APPENDIX 2: HANDWRITTEN LOG OF ANN GAILIS, JANUARY 25, 1983 TO SEPTEMBER 26, 1983

XXVII

ANN GAILLS

1/25
Mike Dolan
Will call one way or other
Delivered copy to him.

1/25 Pyke
They received copy. Are preparing alternative
Will be meeting tomorrow at 3:00. Simms
organizing. Walton (Spec. Asst to
McGrath) + Willard, Simms, Pyke,
Mary Walker.

Don't usually send drafts to OLA or to
Wise. Wise is trial level + they
have other things to occupy them.

1/26
Dolan - no problems w/ it as is.
Doesn't think it will cover any new documents.
since doesn't ask for the type Gorsuch withheld.
Perry issued press release critical of 1/14 letter.
about 1/16.
Send him a copy of what finally goes out.

1/26
Lewis Wise - no substantive problems w/ letter.
Betsy Grey also reviewing letter. Call
her if can't get Wise.

1/26 Betsy Grey
They have no substantive problem
with the letter. Had not heard about meeting.

1/26 2:30 meeting Mary Walker
comments in margin are hers

Walker Simms Pyfer
SDR Walden

1/26
Working group -
follow-up on Lavelle matter (?)

Regn 9 has more Stringfellow documents. 17

Susie Crow document turned over. 3 Stringfellow documents turned over.

1- how EPA interpret 1/25 Dingell letter. Both OWPE & OLC
Does it mean Lavelle
2- is there ongoing IG investigation
(Did this go to OPR)
What are they doing

3- Get all enforcement sensitive documents to us. on Stringfellow.

~~4 - [illegible]~~
4 - Advice from OPR or Crim Div. Public Integrity

Letter of 1/25
- Read it.
- Aren't using exec. priv. to cover-up wrongdoing
- proper procedure is to refer to OPR(?)

Mays - Spec. Asst to Brown.
Yamada works for Brown; Leifer works for Yamada

5. what is status of document review

(6) AG - Call Dolan. Brief him & ask him to attend.
9:00 am

Need chronology. AG + LP

Levitas includes Dingell.

Imperial, Mo. + Shenandoah Stables, Mo.
New dioxin sites not on IPL

Feb.1 - hearing on motion to dismiss

Need letter to Perry re: files. Is already drafted.

Leifer — good contact.

AG - daily(?) memo to MW, SDE + CED.
Check who gets it. At least weekly

1/26 CED, MW, SDE

Report directly to Carol. Keep MW + SE fully informed

1- What is EPA doing about Lavelle issue
2- Do we have information about facts
3- What possible ethical or legal violations are there.

→ Extra copy of Stringfellow documents to CED tomorrow

Have Mike Green look at documents.

Get 17 documents from Laurel.
Where have they gotten info.

1/27 Laurel
Steve Leifer - she thinks he has them

They have many new documents

Mary to talk to Perry now about getting the documents tonight

Applies to first Dingell request

2 groups of documents
① one an inch thick related to Tar Creek, Stringfellow +

② 1981 Sonia Crow files
1981 Tar Creek files - a full box
Have we misrepresented these

Enforcement sensitivity review almost complete
He & Mike Brown ironing out last decisions.
Will finish late this week.
Expect to have about 30 documents withheld.
Apparently in all categories

Sonia Crow - RA - Region 9

Will turn over tomorrow all of the non-enforcement sensitive documents to Dingell & Levitas (?).

If want documents we need to go get them.

~~[illegible]~~

1/27/83 MW, Larry [illegible], Walden, Sims, Walden
Laurel:
Dolan

Perry -
1- letter aimed at Lavelle
May also want to hold 9 staffers in contempt.
Are no notes in 64 withheld documents. not true

Did we review these notes.
" " withhold
We only withheld 3 Stringfellow documents. no

Could there have been withheld

2 - No pending investigations that he is aware of.

{ Yamada is still contact
Brief his secretary.

Perry concerned that give ee's proper info
Letter giving info to ee's
- not too restrictive
- properly presents presidential directive
- can they procedurally claim privilege
- need prompt turnaround

Olson - opposed to SDR idea of doing our own review of documents. That is agency responsibility. Can't assume resp. for Lavelle. Thats Gorsuchs responsibility.

Hernandez wants reply ASAP since thinks may begin interviews this afternoon.

Hadn't Perry promised would be IG investigation. Doesn't look like they have done anything.

If ee's withheld documents that should have been turned over they could be culpable.

We should state in letter that are continuing to look for documents.

Summerlee notes - we have claimed privilege on some. She shouldn't take that group to interview.
Does she know which ~~do~~ of her documents were withheld. Were ID'd to committee.

Are there documents which should have been turned over.

Olson - thinks that Public Integrity Section may need to interview ee's.

She represented Aerojet. Said so at conf. hearing.

If Jensen investigating would not be appropriate for committee to interview. SOP.
Can we follow SOP in this case.

BEST COPY AVAILABLE

For new documents is clear technical contempt of supoena

Lewtas - withhold 23

Lavelle - not mentioned in Hughes + Summerlee notes.

SDR Is not OK for letter to go
or Stringfellow documents

Laurel -
She talked about transmittal letter w/ Leifer.

She went over changes w/ him. Asked him to give us copy before he did anything
Didn't know shouldn't send ~~to~~
documents. Told him was OK.

Perry wants to send letter to ee's.
Was cautioned that Perry should talk to Mary Walker.

1/27 Steve Leiffer

① Non-sensitive documents. They want to turn them over tonight.

Tomorrow will answer Jan 14 letters:

Carol said nothing was to go.

4 inch stacks of non-sensitive documents.
Wants to send tonight.

② Want to send interim ~~interim~~ letter to staff.
Wants to do it immediately.
~~Bo~~ Dinkins + Laurel gave contradictory signals

1/27 Dintman told Perry we should see all documents before they are released.

Leiffer wants to send out ~~info~~

SDR - we should review documents on all initially referred cases.

* Letter to Perry tonight.

* Memo to EES attys -
  - Perrys instructions
  - what is going on
  - CED letter to Perry
  - get regional contacts to ID info for us.

* Memo for meeting
Dolan
Willard
Simmons
Wise
Laurel

Meeting of all re: G matter to explain coordination.

Remind CED to talk to McGrath re: Walden.

SDR - keep Jack Kenney informed. One way street. Don't ask what they are doing.
Send him memo to ~~that~~ effect?
AG Call Kenney & find out if is appropriate.
New memo on exec priv. Get xeroxed & circulated.

Other legal issues. - state bar check w/SDR

We supplied you w/ numerous documents in response to your itemized request, including those pertaining to 3 sites.

Focus sentences narrowly

"In response to

Reside in files all over U.S. + hdqtrs.
Have continued diligent search.

10:45

SDR, Chip/Mike Green to review Stringfellow.

AG Dec 23 - OLC letter or opinion on outstanding issues on Levitas subpoena
Get copies to C, M + S.

Memo to staff
- are coordinating
- working w/ CED
- request from ~~him~~ is request from her
- role of staff attys.

1/28 Perry. Leifer. Olson. CED

Dingell preparing for new subpoena + hearing?
Need memo to Gorsuch stressing importance.
Need to convey our concern.

Purpose of meeting - to impress upon Agency importance of every word in letter + why we are so concerned over what goes out.
Smooth path for cooperation + coordination.

Letter from CED
state "letter seen + approved by AG

Letter 2 -
97 Congress expired.
Make clear ~~that~~ subpoena no longer effective.

Letter 3 -
Invest definitely not closed

Whit Field - turning over full file.
Can't do that if is (open case).
Must be careful. ~~But~~

? Did we turn over almost all the file? Ask Richard Mays

Individual to whom allegation applies has been shifted. No longer works on CERCLA; (works on RCRA)
Aren't aware ~~that~~ this is problem
Has been handled

Regrettable error.

Have given most of file

Act init that new, Ameliorate that
Focus on # of documents are turning over

In effort to ___ have turned over hundreds.
Release of small fraction

in meantime vast majority of our files are at your disposal & are adequate in our estimation to assess program

in SOR if withheld

Mining waste
Dioxin
incorporate into p. 3 —
as to desire to have oversight over CERCL, mining waste & dioxin

Some documents becoming non-enforcement sensitive by passage of time.
Olson - on case by case basis could we turn over
Maybe practical for Dugell. But Leavitas could be thousands.

Did letter ever go to Hill explaining our position that subpoena not continuing. No. Was 12/[illegible]23 draft.

64 documents withheld
20% may no longer be enforcement sensitive.
Are Stringfellow negotiation documents.
Negotiations over. Mike Brown
thinks this good approach. Perry agrees

Richard Mays - Letters prepared.
Didn't send letter to Hill re expiration of subpoena since had subsequent letters.

Olson – EPA should redraft quickly a response to Levitas 1/25 ~~[illegible]~~ letter. Steve to do.

Letter #1
Can't jeopardize fair investigation of charges
Appropriate to have Crim. Div. do it

OK to come from Perry

~~"By copy of this letter I am referring this~~

① we keep getting charges
② don't know what grounds
③

Want these* letters out by mid-week. (*1 and ~~two~~ referral)

Memo to ee's
- Dingell has requested interviews; copy attached
- I am preparing response
- Until then, ask that you refer ______ to Perry

OK to call Barrett + ask for courtesy of not sending over investigator for few days.

Perry should call Schmults + discuss his concerns.

If Barrett obdurate, have him call DAG.

Letter to ee's OK.

Steve Leifer 1/28

Levitas 160 interim sites.
Will soon be many more referrals

Shouldn't review documents that are released
because are voluminous.

Gap documents - Sept + Oct 82
3 sites

Other documents - in existence as of date
of subpoena.

Gap documents - weren't turned over earlier
because agency never went back +
got 3 weeks worth of info.
Then Agency decided to do it. Took a
long time

– Jeppen

Barrett – interviews on Wednesday.
If folks don't come, will subpoena.

Wants memo from us saying delay
one day [redacted]
because is fearful of contempt. Is putting
self on line for us.

SDE 1/28

Do we really want to take on this task.
Must make decision Monday.

Look at CED memo to attorneys in light of
this issue – ~~Do we to~~

Need to send memo to Perry on our
procedures

Laurel 1/28
In Levitas are not copying + shipping. Are making
available in regional offices.

Sims calendar clear Mon. + Tues.
Mon – 4 pm 4:30 staff mtg 8:45 am mtg.
Tues – 10 am – case to be argued.
Laurel – Tues 1:30 doctors appt.

Late Mon 4:30 - 5:00 or late Tues.

Steve Leifer 1/28

Lists 160 interim sites.
Will soon be many more referrals

Shouldn't review documents that are released because are voluminous.

Gap documents - Sept + Oct 82
3 sites

Other documents - in existence as of date of subpoena.

Gap documents - weren't turned over earlier because agency never went back + got 3 weeks worth of info.
Then Agency decided to do it. Took a long time

1/28
Leifer
Letter #1. Leave out ~~@~~ sentence
on where interviews to be held.

1/28 Mary Walker

Run all things by Lew Wise.

Memo from Carol to Perry re: 1/25
letter saying that is aimed at
LaValle & that we want to
~~Run it p~~ review all non-enforcement
sensitive documents
Run it by MW

1/28 Lew Wise

Will keep Walden involved.

Wise hasn't seen memo.

Monday morning bad.
(Afternoon OK.)

Tues morning out. Free Tues. afternoon

1/28 Dolan
Dingle - may argue ~~that~~ is
investigating perjury before own
Committee.

- Use Committee.

Can meet anytime. Leave lunch hours free.

Will call Ray 9:30 if have ~~no~~ comments.

1/28 the phrase about where interviews was ~~taken out~~ put in by Olson.

SDR - make clear to Agency that must clear w/us.
Can't release doc. in pending case w/o consulting w/ DOJ atty.

1/31 — 3 letters
— decision on review - today
Mary spoke to Perry
held up release for our review
— ~~today~~ drafting letter to Perry
— wants it noted ~~that~~ held for us

— Must say something re: Lavella (?) Mary thinks Carol wanted this.
Carol wants letter from her to Perry or Gorsuch re: document review + latest letter of 1/25. maybe contempt possibilit
re: Rita.
~~[illegible]~~

1/31 Leiffer

Had originally drafted memo to staff saying that would provide counsel.
We objected is draft letter.
Started "Dear ——".
Brown drafted it.

* To whom should Perry address referral letter.

* Letter to ec's. Want response by noo

* Documents

* Letter from Dickens to Perry.

* Leiffer needs disk w/ response to Jan 14
Letter # 3. and letter # 2.

* Response to Howard + Levitas memo,
Backburner.
Steve will makes changes + send over
bear for review.
Needs to add language re: fact that
we don't think subpoena is still
in effect.

1/31 Laurel -
- to talk to Larry re: advice to ee's.
- to whom should Perry address referral
- Larry's comments on all 3 letters.

1/31 Lew Wise

Will talk to McGrath at 11:30.

* { We said in brief that would turn
over documents as cases lost ent. sensitivity
Last section of brief.

Leiffer, Yamada, + maybe Perry went
over brief. Discussed that point
specifically.

1/31 Laurel
All ee stuff should be handled by
high level policy people.
Is Olsons decision.
Mary can call Larry, but ~~thinks~~
Larry wants to stay out. Is matter
* for Ted + Carol.
Have Perry call Carol or Mary.
Is policy call according to Jimmns.

Dolan - may be able to pass on info.

Larry adamant. Carol + Ted should have decided
this Friday.

Larry - no comments on letters.

1/31 Mike Dolan

Could they be represented by DOJ or EPA counsel.

Civil occaisonally represents before committees if asked.

Generally ee's talk to GC. They call DOJ generally.
Do we have a conflict here.

Frequently try to hold hearing + interview witnesses who are figuring in one of our investigation. We usually try to work it out.
Probably can't do that here.

Congress They can grant use immunity w/o our approval. Must give us 30 days notice.

Can they be held in contempt if refuse to turn over document they were ordered not to.
Is exactly what Gorsuch did.

What about discussing info that is in ~~that~~ those documents.

* { Do they tell ee that want agency rep.
Do we put on admin leave.
DOJ sometimes does this in EEO cases in DOJ.

Protect against committee arguing that these ee's are official spokesmen. Go in private capacity

Dolan - agrees decision must be made by Dinkins + Olsen. But we need to staff it.

EPA doesn't need to permit interviews of ees in work place. Probably could even in Rayburn bldg.
Maybe should accompany ee.

Should ee ask whether will be transcribed + who should get copy of transcription.

Shouldn't agency atty be there to protect privilege.
Otherwise must rely on ee's to do it.

Committee shouldn't use this as excuse to avoid President's assertion.

---

3 letters - SDR Wise, Dolan, Olsen OK

If OK w/ [illegible] + Carol, can go over.

— OK w/ Walker

1/31 SDR

Referred or where DOJ actively involved.

Internally generated ~~enforcement~~ documents which discuss enf. or potential enf. matters

(Program documents of interest only if discuss strategy, logistics etc.

Generalized enforcement documents – internal back-up

Notes ○

DOJ documents – clear w/us if
① prepared by us
② for us at our request
e.g. expert witness reports

Alert us before make available.

They should have list + file of what went over.

Should keep records of what Committee actually sees. E.g. if copy records in Region they should

* notes of meetings at which DOJ lawyers participate which reveals what we think, etc.

Leiffer - says DOJ doesn't want interviewed. DOJ thinks should subpoena policy makers not staffers. Will DOJ represent ee's who want atty?

Meeting at 3:00,

Referred him to 28 C.F.R. 50

If ee wants DOJ atty at ~~request~~ interview then will we send one?

Ted Olson is Gorsuch's counsel.

Will send messenger at 2:45.

Betsy Gray Rm 3531 →

Has package for Steve.

They won't keep set at Hdqts.

I will have them revoked.

SOA - checks w/ Betty Yu on FOIA Region 2

EPA employees

Inappropriate to subpoena non-policy level ee's.

Anti whistle blower act.

Administrator needs to decide.

* Does EPA have policy re: contacts w/congress as DOJ does. NO

1/31 CED, MLW, SDR

2 issues
- documents
- ee problem

I Perry - to be consistent should go back + review all Levitas documents. No purpose.

Didn't he agree to have consultation in referred cases.

Won't look at old documents CED

Memo ① Referred cases
1 - internal EPA enf. related
2 - DOJ "
3 - generated by EPA at DOJ Request + enf. related

Confirm conversation last week + outline procedure we want to

Perry can ~~attach~~ send to ee's.

② memo to Perry (to show Gorsuch).

Attach memo.

Why are we doing it.

Are referred cases. Could impact on litigation posture.

Clear w/ OLC. Olson volunteered to send it

Another reason for our review is that
(exec. priv. claim.

(II)

1 - extent to which Agency can instruct ee's
2 - ee's bound by exec priv?
3 - will DOJ attys go w/ them.

✳ Send documents to EPA w/ Carol.

1/31 CED. Olson. HW. SDB. Simms.
Can't tell them they can't go to interview
Can tell them not to take documents.

We probably wouldn't represent them at interviews.

(Tell ee's can't discuss privileged documents.

* [Address to AGen.]

Don't have to go to interview.
Entitled to process.

Must be put to ee's very carefully + very properly. Important who does it.

Can make list of things to tell them.
Maybe should clear w/ Keeney.

ee's caught - can be fired if turn over documents + discuss privileged areas.
Can be held in ~~contig~~ contempt if don't.

(CED to talk to Smulty. He may talk to Gorsuch.
Maybe he should write her (Simms)

4:15 – CSD [illegible]

1/31 MW SDR – MW call to Perry. Tell him:
1 – don't instruct not to attend
2 – don't have to appear
3 – let process take its course
4 – may not take documents
5 – ~~cannot~~ render ~~private~~ order by Pres. not to

6 – EPA will ask IG + AG to investigate
ee's w/ info. of wrongdoing should contact them

Bob wants this in memo.

Are all going. Their legislative office gave out

MW – memo ASAP.
– No obligation to appear in informal interview w/o supoena
– if appear
① can't take exec priv doc
② may not be able to have couns

– entitled to protection of supoen & full hearing. Would get govt. counsel.
– refered to IG + AG + can feel free to discuss w/ them.

– not the mechasim for turning over Govt. docs. Is one established for that.

SDR → call to Keeney.
Is OK to tell these people the above.

None of these people subject of criminal investigation.

EST COPY AVAILABLE

SDR- If staff person wants EPA atty that goes to EPA.

SDR - give up documents Green says it's OK.

1/31 Lew Wise

Does EPA have equivalent Touhey rule.
Touhey v. Ragen   IE that can't respond to subpoena w/o clearance

1/31 Lieffer

"I will defer": Perry doesn't like this language. Wants to either leave it out, or send copy of the letter they are sending out.

1/31 Walden

Paul wants copies of letters

Levitas - request is so broad that EPA continues to review documents in its possession in response to its subpoena, and will continue to do so for some time.

1/31 Laurel

- should White House call Gorsuch, to get Perry off it.
- what if subpoenas come before letters go out.
- 4:30

1/31 Wise

Representation committee.

Normally only get involved if ① ee's person interests may become involved; (usually financial stake; subject to civil suit).
② govt interests at stake

In

Don't ever have to provide representation under 28 C.F.R.

Doesn't know who is on committee
Most questions are Bivens issues.

1/31 CED, MW, SDR
Gorsuch meeting.

Gorsuch, CED, Perry, McGra
John Daniel, Mike
Brown

1- will not send to AG or IG
2- will send to ethics in Govt officer
Gerald Yamata. He reviews
all documents.

3- won't send our letter to Dingell
4- will

Didn't give Bob Perry our letter.

Perry called this morning by NY Times reporter. Claimed was memo from Lavelle to White House re: Perry + Brown. Claims they are hindering SF enforcement !?

Ed Kurent quit today.

Back where we started. EPA will turn over anything. How will we protect our documents?

McGrath [redacted] disinclined to keep

helping Agency if won't help selves.
Agency has no procedures for Congressional contacts.

Don't ask to review transmittal memos to Congress.
Review if they send it.

We want document review. Send memo to Perry re: that.

Get documents back to them tomorrow.

One memo to Perry OK.

2/1 Sent 2 letters - re: interviews to Dick Houser?
at White House

Rm 1045-A
West tower
401 M St SW
Waterside

2/1 ~~McGrath~~ Wise
McGrath told him that was agreed that would not represent ee's.
Spoke to Carol last night (while I was w/ Carol?) & after hung up said to few that was in fact what everyone agreed at Schmults mtg.

Laurel — Olson says

2/1 Foolish, counterproductive + damaging to the President's case

per contrary to interests of President

Memo to ee's could have drafted to the subject itself + would have been no worse?

2/1 MW If Olson wants this said to EPA let him do so. Tone it down. Convey sense of it

2/1 Laurel -
Fed wants this communicated in writing ASAP. to protect Dept.

Fielding in communication ~~in writing~~ w/ Perry.

* Memo could have been no worse if drafted by committee itself.

① Strongly believe that investigation should be done by IG or AG.

② ~~Should neither~~
Prefer not interview ee's until ~~[illegible]~~ allegations investigated + resolved, either by prosecution or dismissal
developing for

③ Have told them what we thought.

2/1 - Won't send letter to ee's.

2/1 SDR - If say don't waive e p why not turn over all Stringfellow documents.

Lew Wise - what would happen.

2/1 SDR Keeney - call him re: [illegible] can we on own start investigat.

2/1 Dolan - no real problems w/ letters

---

* Heidi Hughes has found documents.
* More in region per Mike.

? What are the dates on these.

2/1 CED, MRD

Perry — call

Civil litigation shouldn't be vehicle for response to Dingell. Are withholding because of privilege.

Perry will not send letter to Dingell. Has had calls from White House. They will ~~meet w/ Gorsuch~~ try to get more to meet w/ Gorsuch. Perry will call Gorsuch at home + tell her he isn't sending letter.

:

CED Wiera
MW Walden
Zimmer Firestone
Dolan Pytoe
Kaplan

2/1 Coordination meeting

New Rita Lavelle document. IG report to her.

* Circulate EES + Perry memos to WG.

Levitas - [illegible]
Keep turning documents over even if doesn't render request.

Lawyer who does agents review in EPA will substitute for Yamada on Ethics.

Gorsuch going to WH on issue of referral of charges to IG or AG

Keeney - [illegible] not enough to do referral on own

Will be reporter at interviews - per MW.

Will we get copies of transcript.

* Should not take documents we haven't had chance to look at.

MW to call Brown to make it clear they are not to take any documents.

CD Doesn't think Gorsuch would reverse decision not to take documents. She agreed to it.

[illegible]

LS - get review of documents underway quickly. Thinks Civil Division litigator ought to be intimately familiar for documents & process. Same will be true of McGrath if get to merits.

Keep pressure on EPA to keep process going.
Need good coordination.

MW - Bob gave them written instructions. Told them to take notes but not enforcement sensitive ones.

Bob will tell them not to take any documents.

Should Keeney be shown Lavelle documents & asked whether this might be enough to initiate investigation.

Perry had conversations w/ Lavelle before Oct. 82 telling her must stay out.

Simms extremely concerned that is series of documents which may show pattern w/ level. May be innocent, but shouldn't Keeney be briefed.
LS - will talk to Ted about this.

Will Hqs. wait to conduct inquiry until Dingell sends info?

Is OLC opinion being drafted on GSA setting up investigators in own control to derogation of IG.

Will this be under oath.

Thursday - 10:00 am

Walden - Coke Cherney issue.
LS - doesn't think this was thoroughly enough investigated. Should be pursued further. Documents 32-34

* Also check w/ SR

2/1 MW R. Mayo - phone

SL memo 1/31/83

Is normal procedure at EPA to have informal interview.

& what will they do if

cc may be

Mike Cook - 10:00 am

2/1 Leifer 8:20

Want to get Sonia Crow notes out ASAP. *

~~Mike Miller~~ knows about them.

Was in on conversation last week w/ Leifer & Calif. attys. They all agreed that was ~~only~~ ~~was small~~ not sensitive.

Check w/ Green.

Hope to send all letters to interviews.

Gorsuch reviewed Dingell letter to LDH.

10:00 — Cook - Dep. to Skinner, head of Solid Waste

Thinks there are more this afternoon.

Have 4 more inches of Stringfellow.

From Heidi. More after that.

2/2 CED

Put in if have anything turn over to AG.

Took out part re: internal investigation.

Letter better. She talked to Olsen this morning.

3/8 CED, MW, SDR 10:00 am CONF. CED office

Dingell letter changed. Took out part about internal invest. Told Dingell to send to to IG or AG. Will go this morning.

Gov. Will establish internal task force to investigate Rita. Today.

~~Perry~~ Carol doesn't want to send letter to Perry re: interviews. Talk to Leroy.

Memorializing

Handwritten notes of each Agency contact.

Most important - what we tell them.

Keep running record of why things not sent.

Daily diary. or summary of activity.

Why we are doing what we are doing.

TT. TF.

* Get schedule of interviews

Perry + Agency thinks that notes are "personal papers" + not subject to subpoena. Wrong!

McGrath - won't represent ee's ~~[illegible]~~ at interviews.

Issue unsettled as to whether will represent if subpoened. Follow normal procedures. So to

CED
* Start figuring out how to turn over documents which are no longer sensitive. Get started turning them over.
#

2/2 10:45 Leifer TF

Letter 3
Doesn't suggest that ~~to~~ Inmont closed.

Interviews
Everyone going crazy.

G. saying not to attend unless have

① transcript
② counsel ~~of~~
③ subcommittee minority members or staff must be present

~~Just~~
Cook went to 10:00 am interviews w/ Mays.

Steve will get schedule.

Still working on both letters to cc's.
#

2/2 Leifer 11:01 TF

No interviews. Wouldn't accept condition that EPA atty had to be there even if not requested.

Mays talked to Franzen. ~~She~~ Not sure if he would do interviews.

Committee would accept transcript request if have notice.
Apparently rule that must have subcommittee minority member.

2/2 Laurel TT

She & I agreed to take "as your letter suggests:"

She will tell Larry ~~that~~ Carol not enthused about letter to Perry re: our advice in light of latest developments.

—//—

2/2 Leifer TT 12:30.

G at WH now

Inangen & Robie (?). No one knows who Robie is.

382-4146 Mayal

—//—

2/2 Ann Strickland - returned her call to discuss Vertac. She
Volunteered that scheduled for 2 pm. on Hill
Never got memo from Percy.
Has been xeroxing her notes, including "personal" notes etc.
None of her notes were on list of enforcement sensitive documents.
Thinks Leifer has copy of everything pre-Oct 1.

OGC may have been supposed to send documents to Hill in Dec. & didn't.

Eg. Strickland & Kilpatrick go thru own files separately. Mike sends her list only of those he withholds. He may send documents for release that she withholds. Biggest gap in system. Need one person on each case.

Heidi scheduled for today
Jerry Swchartz for tomorrow

—||—

2/2 Richard Mays - Tel. 2:00
Cook called Mays — 9:00 am
Cook advised by Lavelle that Cook should ask Mays to go w/ him to Hill.

Got conditions from G just before that.

~~Cook~~ OLEC had already agreed internally that if anyone went w/ ee's it would be Mays.

Told Franzen wanted to ensure procedural & substantive safeguards.

Franzen & Robie. Robie works for Hill. Laurie Gruben from EPA OLA there.

Mays called Perry for clarification on whether EPA lawyer should be there at all times. Perry said yes.

Perry had talked to Barrett. Committee gave Dingell authority to interview w/o minority members present.

Told ~~Dingell~~ them that letter coming. Franzen agreed not to hold interviews until they get letter.

Ḡ at WH now.

Thinks committee will agree to having Agency atty there if ee's requests it, Committee claims that has heard statements from EPA ee's that are reluctant to talk freely w/ EPA atty there.

Mike Barrett said they didn't have enough $ to do interviews. But can try to do it if necessary, especially if wanted it recorded.

Minority members - not that helpful.

EE's will go w/o documents.
Mays thinks ee's will be careful not to reveal ES material.

Mays in Enforcement side of Office.
EE's know + seem to trust him.

Mays wants to know if is any law or statute saying that shouldn't debrief.
* Told him that I would check on this issue.

Lamar had Bunting come down to represent him.

#

2/2 Pyfer, Firestone, Kaplan Mtg.

[illegible] Prolman + Esposito - Levitas chief investigators. Worked on it a couple months until had ~~to~~ trouble seeing documents in Boston and or NY.

~~Does subpoena~~ should request be categorized to include all 400 sites ? or just interim list.

Agency's response to Levitas poor. OLC thinks its important to do good continuing process.

Are all 114 original sites on full list.

Obligated ourselves to comply w/ subpoena for so long as it was in effect. Doesn't think EPA has done that. (Comply to Jan. 3, expiration of Congress).

{ New batch of Stringfellow documents are subject to Levitas subpoena.

Haven't reviewed Levitas documents since Oct. Is contrary to our legal oblig. + promises. Testified we would turn over.

Should have policy level folks get Perry to add staff to help Leifer.

Levitas - sites listed on national priority list.

Should establish regular system w/ sc - schedule of deliveries.

Has Leifer even sent out request for dioxin documents as requested in Dingell's 1/14 letter.

* Leifer - write in pencil.
Going to WH.

2/2 B. Greenfield

For them Dingell was only Tar Creek.
Thinks they sent everything they ~~had on~~ found on it to Hdqtrs + they did ES decision.

Then found other files. RA send out all region alert to search all files for both Dingell + Levitas. (19 sites).
Sams office took out technical materials etc that was to be excluded.
Then Barbara's office made 1st cut review on ES.
She looked at it. Construed narrowly. Anything that was available under FOIA was considered non-ES.
Sent ~~to~~ rest to Leifer + he made 2d cut.

Levitas materials — [redacted] has sent nothing to DC on Levitas. Is all in their office. Attys will review next week.

[redacted] Sam's office again did initial review to exclude technical materials etc. Then xeroxed + sent to Barbara.

They will review + send ES to D.C.

2/2 CED T

Gorsuch

Lavelle memo apparently getting wide circulation. Accuses Parry of wrongdoing.

2/2 Leifer TT

3 letters to Hill
1 to ee's

Can pick up first thing. After 7:30.

① Should send to DOJ
② want
- EPA atty. in addition to counsel
- transcript
- minority member

(

Instructed not to participate if conditions not met.

Were not told not to take documents. Just enf. sensitive stuff.

Doublecheck

We gave him all the dioxin materials he asked for except ES. Yes

Steve 160 sites

Thursday Meeting - Agenda 2/3

✓ ① circulate memos to Perry + EES re: review

✓ ② update address list

✓ ③ Circulate Levitas / Howard old draft.
Steve L. still revising.

✓ ④ Representation by DOJ if subpoenaed Low

✓ ⑤ How to handle documents which are no longer enf. sensitive

✓ ⑥ Compliance w/ Levitas subpoena.

~~⑦ Representation~~

⑧

Laurel
Dolan
Wise
Walden

Firestone
Kaplan

2/3 Working Group Meeting

① Should not take notes

② If do, should be reviewed first. At least by EPA. We should.

Wise - prefers to [illegible] review + let them take innocuous notes.

New rules on subpoenas. May have to have full committee

Dolan to check.
Full committee in existence only a week.

* Nancy - letter to Perry

* Weiss will get representation issue resolved

Civil Div. has represented people in informal interviews.

McGrath doesn't want Civil involved in review unless are part of litigation.

OLC position is that have legal obligation to turn over newly uncovered documents that were prior to Oct 21, 82.
Civil troubled. Should it update brief for more than 64 documents.

* Levitas letter
to give me comments by 2:00 pm
(Laurel to discuss)

* Should Keeney write + ask for transcripts.

— Don't want to be in position of stymying interviews if is real potential for problem w/ Lavelle.

LP - Region 9 leaking to Hill.

~~[illegible]~~ [illegible] ~~[illegible]~~ to

How involved should we be in advising Perry.

Keep Keeney abreast of everything we know
LP - thinks Ted was to turn documents
over to Keeney.

No downside to turning over to Keeney.

* LP - to find out what Ted has done +
to draft letter to Keeney.

We have independent obligation.

Documents already withheld. Reviews on
monthly basis + turn over.

OLC - claims 194 + Sgt. at Arms
unconstitutional applied to her when exerts
ex. priv. on orders of Pres.
Mere assertion immunizes her from civil
process after contempt citation

* LP - draft review procedure +
circulate to SDR, CED + MW.

Have Region send documents to DOJ atty. We ~~either~~ review and either withhold or release. Send indexs of both categories to Region.

? Will They ~~get~~ make available at present locations.

Laurel - Levitas / Leifer letters
Keeney
Procedures

#

[illegible]

2/2 **CED, SDR** Mtg

SDR - are there alternatives to provide info to satisfy Cong. What about report on each

CED - She + Civil shouldn't send Lavelle matters to Keeney. Represent EPA.
Ted to do it. He agreed to talk to Deputy + Keeney

CED - doesn't care if DOJ represents ee's.

J. Smith announcing dismissal in an hour.

2/2 **Leifer** TF

[illegible] Assume are all Heidi's ~~[illegible]~~ files

* { Dioxin documents – were released in response to 1/15 letter. except 2 (?) documents which they are reviewing

2/2 Laurel

#

Larry – should continue

Firestone draft of Perry letter ok w/ hr. Simms hasn't seen.

Levitas letter.

p. 2 –

" As we continue our review process we will let the regions know which documents they may make available to the Committee & which docs should be w/held as ES pursuant to Presidents Nov 30, 1982 memo to Admin. We estimate that . . "

Do we want to say this? { in addition we will also continue to review the documents we have already withheld to det. if are no longer sensitive.

#

2/2 MW TF

McGrath quoted by Sun said – if final decision goes against govt will turn over documents

2/2 Laurel

Didn't really say he didn't have jurisdiction said inappropriate, continue to negotiate –

Court said referral to g.j. required.

2/3 CED, MW, SDR Mtg. 3:50

McGrath did not say we would turn ~~of~~ over documents if lost.

Get working group for morning. ~~We~~ Either invite someone from EPA (w/ some creativity) or have 2d meeting.

Want to negotiate. Must have new proposals.

Could we let 1 staffer review. Under ct. order?

Lee – thinks we will lose. Going against own policies on justiciability.

What if Congress impeaches G. Is it reviewable. Apparently not
Issue: Should Gorsuch be prosecuted.
~~McGrath~~
Perry wants decision be made.
Olson too + CED. Shouldn't lay behind log w/ Congress.

Rex + Paul want to hold question open. Impasse. Kills case or contradictory argument. But Rex doesn't want to appeal anyway. Worse off being impeached than prosecuted.

Olson – ~~[illegible]~~ thinks 192, 194 not constitutional
Also – we ordered her not to comply.

If announce won't pros. = Gov. off hook on contempt
– could impeach AG, USA, + Gov.
– looks like won't enforce law

CED – Wants AG or Pres. to tell G won't pros.
Doesn't mind waiting until have approached Hill
Thinks decision must be made promptly

BEST COPY AVAILABLE

By Monday - lay out options.
Circulate by Mon. morning.
Meeting w/ Asst. AGs ~~at~~ Mon. afternoon

Analyze + review options.

Send to Carol by courier.

High crimes + misdemeanors.

USA could ask AG + OLC for opinion on whether pros. mandatory + whether is valid defense.

* - Letter - ~~[illegible]~~ change re: lawsuit

Greenland/Firestone

① pros. + raise priv. issue there - worst
② refuse to pros.

Private letter to O'Neil requesting mtg.

If Congress locked her up could seek h.c.

Should we proceed on several tracks simultaneously.

Lee afraid of bad law. What.

Peter doesn't think would get en banc. Thinks they might duck it like Smith.

Should we go back for injunction. OLC + Carol wanted one. McGrath won.
OLC ~~[illegible]~~ wanted injunction against doorkeeper to prevent delivery of citation to USA.

① Olson working on draft on 192, 194.

Congress
- do nothing
- civil action to enforce supoena
- " " force USA to present to G.J.
- arrest impeach & try in Senate (need 2/3)

Dingell paralyzing Agency.

Straight majority for articles of impeachment.

Dingell has said ~~we~~ DOJ haven't prosecuted

Offer special pros. < makes it look criminal / are no crimes

Levitas - strictly oversight.

Leo - escalates visibility to appeal. Makes worse & worse.

Pete - thinks if say won't pros. court would
see moot-ness, practically even if not legally.

Special arbitrator won't go -- House wants oversight
not just invest. wrongdoing.

Perry - ① assess crim exposure.
would House ~~[illegible]~~ file for mandamus
② Announce no pros.
③ If spec. pros. - park on her

Wants Pres. to tell her ASAP.
Wants to ~~be~~ quit being reactive

Pete - no appeal.
- court won't decide, + if does will be against us
- Prolongs controversy
- ~~[illegible]~~ hinders other cases.

Is this contempt a misdemeanor on which they could base impeachment.

Peter - if go on defensive; make ~~the~~ larger issues clear; relate to drug smuggling etc. CED. Tried & didn't sell.

2/5 MW - meet w/her after meeting
Get her if AAG's to meet. Old EOB

wrong ? [illegible]

Levitas - if matters not resolved would ask to consider special prosecutor.
Bottomline on Hill is they want to see

2/5 Steve Leifer 4/5

No one has made up mind what to do.

Based on discretionary decision of whether to invoke Dec. Jdmt.

Hill wants documents.

Steve wants to let them see but not copy.

Need lead negotiator, either Hill or DOJ. McConnell & Olson seemed to handle in past.

May have gotten some notes on Stringfellow from OWPE's that are ES but not marked

9/7 - [illegible], Lamel, Greg, Wise, Dolan,
[illegible], Kaplan

Negotiating

Ted - oppose access to documents unless go back to court. Willing to show to designated members if put them under protective order.

Absence of ability to punish for leaks.

Have letter from Barrett re: agreement that viewed for limited purposes.

AT + T - may have had formal prot. order.

Haven't been asked to show it to Levitas. Would if court

Position w/ other Congress. - limited look at documents under ct. order.

Dec. 9 Olson → Levitas letter.
Our last position.

Olson letter

We have agreed that won't w/hold documents of evidence of wrongdoing even though we would want to investigate.

MD - prefers (too late) to guard that type info + give up oversight.

Watt compromise - Fielding took up docs + Dingell allowed to Read Against express wishes of At. Gen.

In this case haven't exerted ex. priv. against court too.

What if everyone on Hill wants to see them. under protective order.

Dolan thinks Hill would buy.
Larry thinks Levitas would, not Dingell.

Flush them out if they already have those documents.

Chronology of access —

DOJ
Doesn't even give up documents in closed cases.
Let them re-review.

Option 1 – let review under court order

2 – review / w/restrictions but

We rejected their offer to review in ex. sess.

Sight access v. non-sight

Redacting – impractical
unlikely to be accepted.

No judicial review.

Does Smith have power to do it.

Df court

Scope of review
    abuse of discretion
    But are strictly legal issues.

Ct. App. might look closely at juris.
which Smith didn't.

2 pros to ~~discretion~~ opinion
    1- impasse
    2- contempt proc.

motion to reconsider

J. Smith ruling on 1&2-4 would
be advisory.

Chada

Object - prevent AGen from having

House – begin impeachment
~~OLC~~ OLC – referral mandatory
Civil – says no.

House

AGen will get creamed if says law unconst.
Doing against will of Congress.
AGen will prosecute if court says too.

We can take documents to Hill.

HD – Hope ~~that~~ they won't accept; ~~says~~ wants good decision from court.

What happens if issue new subpoena.

Smith ~~too~~ could skip 192 or 194 + go to merits.

Sec. + Intelligence – sui generis
completely different law + procedures.
No general access. Full security clearances.

Members only review

LS No possibility that court will pass special juris. statute.
Select Committee case.

Special statute

(

LW - review AT+T

MD - p.r. disaster
If give up - do so gracefully

Watt compromise terrible.

Party who turns down offer in deep trouble.

Joint motion to J. Smith.

Prot. order - downside
- Hill claims victory.

Civil - doesn't agree that 192-194

(LS - negotiating option
GW - litigating option

MD - letter to O'Neil

2/4 Brenda

Gailis/SDR/+ MW to attend Monday.

2/4 Walden

(Not clear from AT + T whether protective orders used.

Outlined process of reconsideration.

2/4 WW - call Yamada

- EPA wants House resolution erasing contempt

2/4 Yamada

Adamant that can't leave EPA unprotected.

~~[illegible]~~

* Florio requested all dioxin material.

Defer to DOJ on what to do about documents.

~~Documents~~

(Might not want to let copy. But anything up to that probably OK.

Pardon - ID process

If Dingell serious about getting documents

2/4 SDR, NF

Puts entire EP at risk if person who makes claim takes risk of going to jail.

LS. has said all along

Lasell resigned. Brown took her place
Acting Asst. Admin

Yamada acting in Browns place.
Acting Enf. Counsel.

Kirk - Kurent's job.

2/4 MW, SDR

Gorsuch memo to Schultz re: OMC.
To be referred to Keeney.
Glen Weberger taking Kirk's job.

Yamada will do both GC + EC.

2/7 CED

If want to see documents, move us to compel + we will let them see under court order.

2/7 NW Re: Memo

- Discuss ~~decision~~ whether to announce decision
- Wash. Times article
- summarize group recommendations
- organize + put in subheadings

NF
- need discussion in 7 + 9 ~~ad~~ (#5) of impeachment.
  What does the House have to do
  + Spell out ~~steps~~.
  Must they demand that U.S. Atty pros.

3/7 Yamada

Don't think the Hill will accept anything less that sight review.

Use same procedures as in camera.

Decide issue as soon as possible.

Preparing PD for Administrator.

Is there problem w/ Presidential directive if we give sight access. Do they need paper record.

2/7 SOR
Exec. Session – seek ruling from Parliamentarian that Committee could see documents under
* and not make them ~~public~~, available to other members of the House.

Check w/ [illegible]

— civil suit against Admin. to enforce supoena

— what are const. problems w/ new spec pros! ~~statute~~

NF — impeachment -- what is process.

Issues

① is "shall" mandatory

② Const. of 192-

✓ ③ High crimes + misd. Is it the offense, or must there be a conviction

? ④ special prosecutor
- what are problems w/ new one

? NF ⑤ MW - needs discussion of p 7 + 9 (+5) of impeachment
- Do they first have to demand that USA prosecute.
- would this be sufficient basis for impeachment.
Admit high crimes or misd.

MW
⑥ Summarizing opinions of group.
Heading.

NF ⑦ could House sue to enforce subpoena
would it need special legislation?

⑧ Kenney * statute ~~[illegible]~~ mandatory.

⑨ Need clear option if negotiation fails + we decide not to prosecute.

⑩

2/7 Laurel Pyke

Option paper

p. 3 (c) would

1 (d) spell out what Exec.

- Can't release anything w/o previous vote of Subc
- Can be overruled by Comm
- no copies
- make notes

p8 3 -
holds open ~~[illegible]~~ option to allow judicial determination on 192

p9-10 ∫ unilateral ~~decision~~ determination by the ~~Atty Gen~~ Dept. that the statute is unconst.

New special pros. — would burden assertion of exec. privilege same as for S. Harris.

We are still invest. something we did

Thinks House could ~~not~~ sue G to mandamus him to turn over documents.

Senate has

2/7 Lew Wise

Refinement on option 2 from OLC
- give access to limited #
- we retain possession
- they have burden to justify further disclosure.

p. 2 - arrest is not 1st step in impeachment (?)

When threaten to arrest it for contempt, not to start impeachment.

Used to do that before 192 passed.

House - 5th option do nothing

We have that option too.

Lew - thinks it's OK to announce that will not prosecute. Perfectly logical.

Impeachment unlikely. ~~thinks we should~~

strike it

Release wouldn't be unfortunate precedent if work out good settlement.

Appeal - Doesn't think future efforts to assert privilege would be undermined.

Ted Olson is one who wanted civil suit.

p8, ¶ 2 ¶

Prompt decision should turn on

Doesn't think was protective order in AT&T.

2/1 Dinkins, McConnell, Olson, McGrath
Ramsey, Wise, Walden, Simms, Pyke
Walter, Dolan, Lambert, Greg? — Aust.
Willard?

Focus on negotiations.

McGrath - thinks C will hold out for seeing docs.
- may not want to propose anything concrete for openers.
- can't settle if hamstring invest. or can't guard release
- find different forum for proposal
- start w/ offer of summary
- want something new, like prot. order
- agree that if is squabble let them bring suit under 1331.
- or try Exec. Sess. rules
- don't draw hard + fast line.
- try to save face for both

Olson - Doesn't want to give away slice of Pres. power.
- will establish precedent of giving law enf. files.
- one committee wants all files; blanket request
- is only Levitas. No suggestions of misconduct. Strictly oversight.
- pending DOE case on overcharges
- could apply to Cabinet Council docs.
- if give up law enf. files would we give up Cab. Council
- adamant. Doesn't think he can recommend anything that Hill would buy.

CD - could we provide more detailed summaries.

Olson pretty firmly opposed to sight access.
Hard to enforce. Hard to know if is released.

If in report, probably be protected by Speech + Debate

McGrath - can't go w/ something if have substantial risk of loss of control.

Levitas
~~Dingell~~ staffers saw some of these last year. In NY.
Dingell raised hell.

Willard -- is all balancing.

LS- If House had brought action while sup. still alive.
would have been hard to keep court from allowing one or 2 responsible people to view to establish their case that need them.
2 prongs to sub. argument
① don't want release
② can't participate w/us contemporaneously in law suit.
How hard are we willing to make Congress work.

McGrath - doesn't think House will be willing to go to court.

Carol + Bob don't think they want docs.
McL doesn't think we can settle.

RMc Initial view of: ___ contempt citation of 97th. 98th Cong. can't retract. Willard agrees.

They could promise not to impeach.

Olson doesn't think will impeach.

If Prot. order - big cost to them. We can sanction them.

~~Willard & [illegible]~~

Willard - willing to let them look at docs. at EPA.

Olson - Orrin Hatch today wants to see open FBI files

No way to make this peculiar to EPA or this case.

Could at least limit to EPA, or to ~~[illegible]~~ non-crim.

Dingell now has request to Hodel for docs at DOE / ERA
Willard would turn them ~~so~~ over.

McGrath - not matter of principle. Is matter of protecting info.
e.g. [illegible] is long process. If docs improperly disclosed, could revoke.

Olson agrees can't get deal w/o sight access.

McGrath - ~~[illegible]~~ if
Focus on ~~strategy~~ whether should let see docs if is possible deal.
Unrealistic to think ~~that~~ would agree to go to court.
20% of docs no longer enf. sensitive.

Olson willing to pay price not to turn over docs.

Simms - would like to see them reject offer.

McGrath - Thinks Hodel won't go to mat.

SOR - one option - don't do it at all.
• what are costs; what ~~would be~~ will face us down the road

MW - we made 3d party offer one time.

McGrath - memo w/ basic options.

① stick to no sight access
② permit doing w/ ct supervision
③ some severe restrictions
④ limit # of people etc
if disclosure, all bets off

⑤ must be agreement w/ leadership
⑤ Both Levitas + Dingell

MW - once settlement breaks down must explore all options.

Mc. - AG will want to ~~[illegible]~~ let someone see them.

Mechanics will depend on Tip O'Neil + what

Willard - doesn't think current spec. pros. statute constit.

Olson, McGrath - can't conceive of prosecuting

Royce - ① whether comply w/ mandatory statute
② whether sign indictment.

Olson - frivolous + abusive (?) to present. Would say don't prosecute because is unconst. Would be charade to present + ask to ignore or refuse

McGrath agrees.

Olson - would send letter to Hill saying think is unconst. + can't go forward. ~~As we (I would encourage to~~ If you think its const., ~~[illegible]~~ pass new spec. pros. move to reconsider or veto appeal + say that reasons for his opinion aren't there.

McGrath - unfair to suggest to Hill to pass special pros. statute! As appalling, or worse, than going to g.j ourselves.

LS - any way to approach in pending party. more imaginative approach needed.

McGrath - J Smith washed his hands of us.

• Hill could institute impeachment proceedings.

① arrest
② sue us to compel prod.
③ pass spec. pros. statute
④ impeach
⑤ mandamus U.S. atty

~~If they won't~~ Likely to lose mandamus of US atty

RW - They don't want to litigate - want to impeach. Thinks is real possibility. ~~McGrath~~ & McCon disagree.

McGrath - thinks would go after Gorsuch as well as USA & Atty. Gen. Straight out shot at G.

McCon & LS - don't think will be impeachment. Maybe have a hearing but is doubtful (Rodino).

Levitas - his last statement was AGen has conflict & should be spec. pros.

McCon & Olson Thinks may go for spec. pros.

~~McGrath~~ Royce - §192 must have intent
Olson -
Royce - doesn't think g.j.

Royce? Thinks that must indict; can't go by information

Paul - would recommend veto of spec. pros.
Olson - would not
Would want G to join w/him in asking for it.

Olson - we could intervene in a spec. pros. case.
If G decides she ~~wants~~ Robinson Gray?
& not DOJ to defend her.

LS - idea of presenting to GJ fundamentally offensive.
Bad downside to vetoing spec. pros. bill.

Olson - can't suggest spec. pros. to Hill.

McGrath - thinks prob. can't work out deal.
prob. will appeal
maybe some judic. hearings

Olson - any need to go back to Judge Smith
~~once [illegible]~~ if can't negotiate &
aren't going to pros.
-McGrath doesn't think so.
Afraid judge might say is mandatory
~~Pr~~ duty to present. (top of p. 3)
Paraphrases 194 - indicates is thinking
~~that~~ is mandatory.

Royce - would get 1 line denial. Unless we
say that aren't going to pros. Then
still get dismissed, but in more than
1 line.

Ausara - pros. can decline to bring to g.j.
cited by Smith.

10 days run on Mon. 7/14

Stan Harris thinks statute ~~not~~ mandatory as
to presentation.

T CED, MW, SDH, HH

2 lists - 10-12 copies 3:00 pm

(

1st Thur tomorrow

① options
only 2 she is comfortable w
ⓐ protection of ct
ⓑ heavily redacted documents

② where we go fm here

m.b. until Mon to file w/ Smith

Hauk - submit to ct. in camera.

* { Can we get no longer enf. sen. documents to Hill by Friday. Answer by Wed. morning

✓ * Try sample redaction. Before mtg. w/ AG

(

Bo

~~AG~~ * NF Research issue of whether contempt could be undone for AG tomorrow

NF * ① what if G resigned. What effect on contempt. ② Does ~~that~~ the contempt follow her.

2/8 Yamada -
11 - 2

12:30 - West tower
Rm. 1037
401 M Street

2/8 Leifer

- wants Levitas letter
- Just sent over more Stringfellow
  Separated into ent. sens. + non-sens.
  sent
- Send back Stringfellow non-sens
- Committee wants list of w/h documents
  so they can subpoena
- Begin reviewing old Stringfellow documents

Bob Wyatt 454-7452 FTS coordinating *

2/8 CED, MW, SDR
Give CED annotated version that spells
out pros + cons of all the options.

Call Keeney on contempt of Congress
Ghiorzi

** Keep contempt + documents separate.

Antitrust - redacted documents in Iranian claims case.

Rex Lee - tracing sources of foreign intelligence
They used system of reviewing notes.

SD

McGrath - Thinks we have strong case. 75% in our favor.

(

2:30 Carol
12:30 Ynadaa

2/8

Firestone

19 U.S. 204 (1897)
Imprisonment cannot extend beyond date of adjournment. ~~[illegible]~~ Rule of Anderson v. Dunn

Statute supplements inherent power of Congress to try her for contempt.

Laurel

Exec. Session
is up to Committee to determine who can be at Ex. Sess.

cl2(g) - can close meeting if disclosure would ~~violate Rules~~ or violate rules of House

Hard to prevent disclosure to

2/8 Laurel

per Mark Rotenberg

- long would have to determine that 194 not working
- would have to pass new resolution authorizing Speaker to pursue this ~~option [illegible]~~ self-help procedure matter than 192
- ~~could be b~~ 98th could take offense that she was contumacious before 97th
- starts w/ arrest & confine kangaroo trial - allow her to speak

7/8 MW, Yamada

Y – If Gorsuch prosecuted. Conflict.
Would have to hire special counsel.
Less stature when raise ~~good~~ public policy defenses.

Ways to develop protocol on how to process.
How to let people know what documents

Y – option
don't negotiate
Levitas not interested in
1 not getting docs
2 limiting access to Comm.
3 use of documents
They claim have never had leak.

Contempt
– defective subpoena
– overbroad.

192 – similar to 1 house veto. One house could

FRCP – court appointed prosecutor? Perry thinks so.
Yamada has someone looking at this.
Ask Civil & let him know.

Thinks arrest & trial serious option.
Avoids us being able to raise defects & defenses.

No connection between

Put in that EPA wants reversal of contempt

Yamada & Leifer – invite to mtg 17th

Yamada – add ① don't negotiate or
② make decision not to pros. before negotiate

Has advantage of getting crim. case out of way.

SDR - Ask Yamada if can take to Heidi re: Stringfellow.

2/8 RED, SDR, MW

AGen wants to approve release of no longer sensitive

By Fri. - turn over MM-ES document

Call Mike Green - get him back Thurs. evening
Have him make decisions out there
+ call us w/ doc to be w/h.

MW to check w/ Perry
Deputy AG was under impression that G sending package to Hill w/ Lavelle letter re: Perry
1) is it true
2) get copies

2/8 Wyatt
He is working from
Dec 13 memo Perry, Ramsey, Walker
Brown
51 docs.

Believe in Region all of the documents included in that list should be declassified

: In Region has not completed review for Oct 21 → Jan 15 period.

2/8 Marty -

1 - new Stringfellow documents
2 - old ones w/ Ramsey

2/8 CED, MW, SDR

~~JC~~ ① Compare last proposals
- put side by side
- below put points of comparison

Civil to work on list of assurances we want from Hill.

Remember is Levitas

② Outline negotiating position

DAG especially interested in redaction. How about redacting & allowing only members to see unredacted. Staff to see rest.

Part 5 - spell out all ~~permutations~~ permutations

[Perry called - Dingell threatening to hold him in contempt for ob

~~Separate~~

- Drop 1, 2, 4
  Expand 5

- Keep in Stringfellow
- Keep in no longer ES docs.

* Set meeting of working group for 11:00
include Deputies. CED to chair

Circulate revised draft prior to that.

AAG's don't think This Congress can undo last Congress' resolution

Could we recommend 1 site from each region + another 10 of their choice for redacted documents.

Must accept on schedule that won't interfere w/ litigation.

Court order option - see non-redacted documents.

Prepare for 11:00 mtg.

~~[illegible]~~.

Late tomorrow - meet w/ AAG's. If can reach consensus, will meet w/ AG + DAG ~~[illegible]~~

Schmults will negotiate.

Add into redaction option - summarizing redacted parts. eg: strengths + weaknesses of govt. case.

SDR. - redact for limited # of sites
can't interfere w/ ongoing enforcement process

In Exec. session make available policy + career level people to talk about

S - Release all Stringfellow; clouds issue
But make them agree that if find wrongdoing, send to IG or AG
~~[illegible]~~

SDR - do not let them see redacted parts.
No sight access.

Except under court order.
CED + SDR - 1

Require them to keep log of who sees documents

Make them view at Agency

CED - limit to 2 staffers (or 4 - 2 maj. 2 min) to "cruise" files.

Good from practical aspect. Doesn't preserve principle.

SDR - 2/9

CED wants to see docs ~~that~~ indicate any knowledge on part of G, S. Crow & J. Daniels ~~that~~ were negotiating the coop. agreement themselves or were playing politics
Doc - Crow conv. w/ G.
Wants to see today

2/8 Staff group meeting
Dolan, Pyke, Kaplan, Walker, SDE, Wise

Dolan - disclosure normally arises when
C reads about crim. invest.
They then want to see DOJ files:

New dimension of poss crim conduct.
Ⓑ Involves Keeney more directly.

Should we turn over potential
Criminal evidence to Hill unless
Keeney has seen it.
Wouldn't normally do that.

Consult w/ Keeney befor turning
over all Stringfellow docs.

Dolan - any settlement proposal should be
run past Crim. to ensure is no
harm to crim. case.

Is referral coming to DOJ on SF.

SF files were developed for Superfund
clean-up.

McGrath - wanted solution that would be
applicable to other Committees

Wise + Walden
Don't go under court order -
Allow sight access. Members + a few staffers.

Assurances
1 - limited # of people
2 - documents remain in our possession
3 - we keep notes
or let us review
put in options
4 - if ~~[illegible]~~ is leak - compromise terminates

5 - if they want doc. must agree to subpoena ; agree not to go w/contempt
6 - no publication of info.
~~Make it 2 steps~~
2 steps - they need to try to justify us why to turn over copy
- subpoena

Dolan - difference between misconduct + potentially criminal conduct

Kearney - did not think that evidence of perjury before Committee should be, as matter of comity, be shown to Committee.
Violates our normal possible.

SDR - ~~[illegible]~~ 20 sites
give redacted docs
briefings
as to both ① SF and mechanism
② enforcement
Don't let them see docs.

Court order OK

Can't interfere w/litigation

Release all Stringfellow

MW - agrees w/SDR
If no go, would allow ~~sight site~~ sight access by just ~~as~~ Chairman + 1 staffer.

They need to tell us what is minimum amount they need for oversight

Dolan - they won't buy redaction
might make spec. prosecutor more attractive.
Sp.
Don't back down.
D.
Prefers court order, then Stevens, then

McConnell

Ed talked to Fielding. Told him absolutely
had to exert control!
Told him reasonable person could conclude
there might be wrongdoing

Mary thinks that how hard a line we take
unless we have better idea of what will
happen down the line. Better to turn over
than face impeachment.

Laurel - release nothing

Wise - AT+T ultimately provided site access of
random sampling to limited # of [illegible]
Members + Staffers
Staffers got FBI clearance

Dolan - be attentive about career people.
Bad practice to let them be called upon
to justify decisions
Let appear w/ policy person + in Exec. Sess.

Dingell letter

Will subpoena on Thurs.

Precedent - law - is always new ballgame.

2/9 CED, McConnell, MW, SOE

Per Perry
1. Will send to Lavelle memo to Hill
2. Will make own decision on release

Upset that AG talked to Hill
Fri. 7:00 am — CED told Perry Michel over here

Post article - AG's assets in blind trust.

Perry wants to answer to noon today.
McConnell - wait until tomorrow

Wants us to respond
1 - we were aware
2 - What he did was proper

But we didn't approve the letter; esp. the instruction not to participate if conditions not met. Just the opposite.

G may decide to release all SF docs.

2 aspects
- Perry unlikely to refrain from responding ASAP

Need decision from AG on approach.

O'Neil refused to see AG.
Talked w/Michel only about how to approach O'Neal.
Was in context of discussing a number of other things.

Michel was to ask O'Neil what he wanted to do.
O'Neal said negotiate w/Levitas -
Levitas willing to get together
We need plan.

U.S. Department of Justice
Land and Natural Resources Division

Office of the
Assistant Attorney General

Gorsuch suit

Report to Congress on enf. matters / regulatory matters which would be testimony + expurgated versions of documents not talking about strengths/weaknesses of case but would talk about level + types of activity + enforcement interest.

We can't get client ~~[illegible]~~ in line.
They have to obey Pres. order.

AG can negotiate, but can't settle w/o client.

* MW - get special G clips.
Make sure MW + I get it + SDR

12:00 meeting AAG's

① latest Dingell letter

~~② Levitas draft~~

③ Revised options

Agenda

① ~~[illegible]~~ Options paper

② Stringfellow release

③ Response to Dingell letter

CED

Write up options + get typed. Back at 5:15 6 copies

1. ~~[illegible]~~ Committee   5:30 - Schmults +
Chooses 20 sites   Other AAG's
   - access to those files
   - redact inf. sensitive
   - (Maybe)
      - provide summ——
   - W offer Exec. Sess. policy/career to discuss general approach to enforcement & spending
   - continue docs as base ES

2. Limited viewing of docs under ct order

3. Let certain members have docs but keep conf. Next time we exert ex. priv. Congress agrees to go to ct.

4. ~~[illegible]~~. Limited # members review docs at EPA. No staff/or 1 or 2 w/ Justice veto of staff
   No notes

   Assurances of no disclosure of specific materials.

   If want copies, must ~~subpoena w/~~ ~~[illegible]~~ write us, then subpoena

5. Give unredacted docs which may indicate coverup and issue them redacted documents
   — if still make

Under all scenarios release Stringfellow

BEST COPY AVAILABLE

1/9 Leifer + Laurel Levitas letter

Changes p.1 – staff + senior level
p.2 – ¶1 – Laurel's changes
¶2 – OK

#

#

2/9 Leifer TF

Told him was OK to take out estimate on p.2 since is repetitive of p.1.

#

2/9 Yamada TT

Will review memo + call.

Leifer TT
Last batch of docs he sent over Barbara Grim.
Program files.

2/9 CED, SDR 7:30
Kenney - will start invest. on conflict of interest in SF
Not interested in other charges. Not fair to these people to initiate crim. invest. on such sparse allegations.

AG - 10:00 am
Then Fielding in afternoon.

Friday - neg. team to Hill.

* ~~AG~~ Put on Agenda for AG to invite someone from EPA. to WH.

Dale Parsons

10.00 - 2 tasks

- set out general princ.
  - can't interfere w/ ent. act.
  - can't be 100 sites #
  - they must maintain confid.
  -

Do we Release all ST docs.

~~Opt #~~ Put title on each option

Agenda - put on it to consider whether to focus on just 64, or on all.

Present AG w/all 5 options.
1 page, legal if necessary

Opt. #1 - Redaction only

All options must be limited

#2 - Court supervised

No introductory sentence.
Name + entire list of conditions

~~Dag~~. DAG - ~~the~~ summarys must be very general. Danger of leaving out things if get too detailed.

#3 - O'Neal to argue on behalf of whole House

TURN OVER — AGREE TO LITIGATE

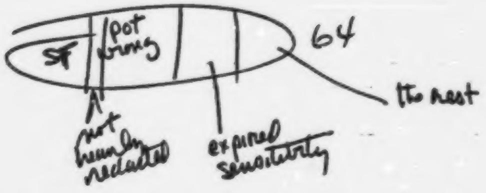
2. Court order
- few members review
- some staff review
- no copies
- no notes

Get rule from Laurel # 28 (?)
re: all members can see.

---

* Correspondence
- memorialization of offers

Fri - how many hours & people working on this.
how much redaction on how many docs
how many ST docs.
how ma total Enf. sens.
" " prioritize to
which region has most sites



How many docs weekly
people working on it full time.

* What is in docs
Bring up tonite

General SF info

* Beer - until COB to check on what docs we have

How many docs for ST are there
" can be released
" can be redacted sensibly

Briefing - 8: am.

2/10 CED, Laurel

Litigate all claims of exec priv. raised in 98th Cong.

2 Docs. Show Lavelle involvement

① Lamar-Miller memo to Lavelle 6/18
Was faxed to Crow "Eyes only"

Her memo recusing herself wasn't yet circulated, but she had testified that recused self — Was released

* ② IG audit
Is in review here ~~was not read~~

1 Doc. shows poss. political influence at ST
Heidi Hughes notes

Rita Lavelle

* map of US w/ major sites on it, for CED.

Dingell - originally only had 35
2d shipment boosted it to 51
Released ~~#~~ 10 parts (?) + 7 whole ones (?)
for total w/h 42.

Levitas 42 + 22 does not include dioxin

In late Dec - 7 dioxin docs. w/h by Lavelle.
We turned over all but 1 (?)

? * Is Berlin-Farro on IPL yes

John Daniel is lawyer.

21 ~~#~~ Stringfellow documents on list of 42

Green - how many would be release

{ Mid-January - new batch of SF from Region.
EPA thinks 24-25 should be withheld.
30-40 wants released. }

Will be moot issue if group decides to turn over all SF documents.

2/10 - ~~[illegible]~~ Green

Aerojet site near Sacramento.
Agreement between State, Aerojet ~~makes~~ that A would over documents in enforcement case if Calif. kept confidential.
Apparently NEIC in it too.
Richard Mays ~~then~~ 10 days ago when Mike found out at Haz. Waste Task Force. Mays shocked

NEIC had ~~no~~ exp. also ~~that~~ state didn't so agreed to do work & agreed not to release to rest of EPA.
Are letters on This to Lashy, either from State or NEIC.
Region 9 getting ready to issue 104 letters ~~us~~ and ask for info afresh.

2/10

Mike Steinberg

Butler Tunnel on IPL, not on 400.
Sent ~~[illegible]~~ para legal up back in Oct or early Nov. before subpoena

10 Coast Guard filed 311 cost-recovery action.
Contemplating CERCLA actions against 1 or 2 generators, but only if 311 no good. Very iffy.

Paralegal brought back a number of documents. Region didn't keep copies.

Region 3
Has finished review, has boxed up ES material & is waiting instructions to send in.

Not sure whether Region treated this as ES for 311 or potential CERCLA.

He will check

6 feet of generator tickets etc. Not withheld.

~~Steinberg~~

If files transferred to DOJ prior to subpoena, are they covered by subpoena.

2/9 MW - TF

Mike Synar Okla, Govt Oper. - send 6 long lists of demands for appt cal. of Lavelle

Florio

(~~2/10 travel~~

2/10 Get back all copies of negotiating positions
Till Perry nothing changed.

* AG - wants House Rule re whether
check w/ [illegible]

2/10 Leifer TT

Will send requests & his list of outstanding

Wants documents from us.

(Everyone mad because we don't trust them
to decide what is ES. We are changing
~~prod~~ procedures

2/10 Leifer

DIOXIN

Orig'l - Jan 14 request
Also LaVelle promised them from hearings

< Gave Hill all but 2 or 3 in response
to Jan. 14 One is dioxin tracking list.

Don't know what happened before 1/14.

Nobody keeping copies of what went to
Hill. They don't make copies of non-ES
Thinks program office has list of what went to
(~~Bridgeton - no one has - doc.~~ Hill on dioxin
Bridgeton - told him

2/10 Leifer 4:00 TP

(Subpoena
① Dingell
- 3 sites + 2 diox 10:00 am
repeat of earlier subpoena March 10

Then adds
42 documents
Handwritten notes of J. Kohanek
(only Diox. documents ~~of the [illegible]~~
withheld - turned over 6.)

Dioxin sites tracking list

Excludes same things as letter of 14th

② Dingell Feb. 17
11:00 am
(all appt. books, diaries calendars
+ telephone logs of Rita Lavelle,
Warren C Wood, Susan Baldyga
Eugene Ingold, Henrietta Janiszewski
(calendar lost & no one can find it)

Laurel - Synar is on Dingell's committee

2/10 Lee Tyner

Region 2 - resistance to copying non ES.
Hazel sent ES. to DC.
Have finished all of their review, at least ~~[illegible] copy~~ as to Kin-Buc.
Don't want to copy non-ES. Will wait for word from us. Tons of documents.

2/10 Leifer 5:30

Don Northius OGC doing letter to ~~OGC~~ ee's saying "be ther cooperative"

① Chem Dyne, Seymour, OLC.
Syner letter 2/10, wants everything

② Dec. 20 letter Schwers – Rita's calendars

③ Florio – Feb 9 letter
All docs human health exposure assessm on dioxin, etc.

resumes on ee's who participated in drafting

2/10 Nancy

28 USC 1364
One civil action brought by Senate ~~cte~~, Watergate era. The $10,000 limit was still in effect.

OLC memo's re this point. Haven't decided issue. the split of opinion.
Is presumption that House doesn't have comparable powers. Except that 1331 now be available.

But 1364 (a) has exclusive for federal officer.
Wouldn't apply in our case even if ~~was~~ ~~spec~~ House has same statute.

~~[illegible]~~ Contempt

18 USC ~~3282~~ 3282 5 yr. SL
~~3285 Crim. contempt~~
402 not applicable here ~~[illegible]~~ 1 yr. statute on cont. under 402

BEST COPY AVAILABLE

5 USC 7211 - interference
18 - 1505 - obstruction

5 USC 2302(b)(8)(A) - Whistleblower

OLC has memo's on all these

Simms said let To be one who answers all these questions.

2/10 CED/SDR 8:00

need facts on how to do oversight
what would we ask for if wanted to do exposé,
or to ~~do oth.~~ know what enforcement
efforts doing.

For

Some already in place in RCRA when
came in. Why SF have problems.

What about two people - Hedeman
How big is program. People + $

["How many EE's at EPA + $]

Oversight - how to really go about it.

- SF - how it works
- enforcement activities
  chart in notebooks, too many holes
- what we have pending in Div.
- go back to early days
  - How things have changed

{ - CERCLA
Dingell Rpt } in committee print form

Map of sites locations

~~[illegible]~~
(map

* Notebook w/all correspondence

Slim notebooks in different colors
Big hole punch

Notebook w/ general info on CERCLA

We need to give her the facts to assess what approach to take

ST - where is Green in negotiations
- how could Rita have screwed it up

* Marty - bias on Lent, Snyder, Dingell & Broyhill
(+ other members of 2 Subcoms.
List of staffers.

Talk to McConnell about in whom can we can have confidence.

* TED to see Green in morning.

Need info on B/F + TC.

No referral on either.
* Why is she interested in them.

Commitment of funds.
How much, for what.
How long to go back + develop recoupment action.

(List of reasons why it will hurt to open files
- in general - fine factor; detracts from enforc.
- specific cases

need that to be fairly well based

What should their legitimate concern be.
is program operated on political basis.
is it management

Compare start up of SF w/CWA, CAA

Which of Rita's spec. assts. are still there.

2/12 Leiffer
Committee saw the 1st 35 on list of 51. *

He has complete briefing book We should
come review it.

2.15 | Laurel
Has never reviewed Site Tracking List as
w/H document. (is under review at EPA)

Withheld only 1 dioxin document. (Kohanek notes)

Is OLC opinion that a Congress can't undo

98th could pass resolution saying shouldn't
prosecute.

Doesn't think can ~~order EPA~~ ask for
citation back.

2/15

Dolan

Thinks Contempt becomes moot when documents turned over under some agreement.

Sense of 98th that 97th wrong.

Resolution is precatory

Joint resolution is same as a bill. Must be signed by Pres.

Concurrent resol. is not signed by Pres. but is passed by both Houses. Usually used for housekeeping.

Single House resolution.

Thinks resolution could be drafted to meet OLC concerns.

Doesn't think could get resolution off floor.
Even

Agrees that one Congress can't undo resolution of previous Congress.

This resolution issue comes up in One house veto question. where one House by a resolution [illegible] overrides President. We say is unconstitutional.

Perry was going up today before Howard's committee

2/15 Leifer TF 11:30 am

OWPE just found tapes of Stringfellow Meeting

~~[illegible]~~ Tapes of mtg. held in Region IX. Barbara Grimm apparently recorded because Heidi couldn't be there.

Doesn't know any more details

Dean Ross in OWPE.

Are also some other responsive documents.

Only Leifer knows of it so far.

["Leifer" - award for client cooperation.]

2/15 CED, SDR Habicht

Phrase, series of phrases, sentences.
What he wants to accomplish w/SF
Why $ & how to be spent
why enter neg. + settlement

Times Beach
Testing. FEMA doing it.
EPA has very hi bio-assay standards.

But CDC likely to find that tests be as or higher than previously thought.

What to do. Should they now make decision on what to do.
Should they go w/buyout.

Can use SF for buyout. Yes.

~~[illegible]~~ In next couple weeks CDC will have final data. Will be everything needed to make decision.

DG to draft.
Must go over this afternoon.

Cover sheet for others to read. Pres. won't read it.

Separate sheets of paper with points on them.

① General set of points. Fact specific as possible.

② Specific cases or issues.

Do one on Executive privilege.

③ Separate page on settlements.

④ Internal, dissension at EPA.
Positive statement on what doing organizationally.

Facts, # of cases brought.

Put heading in form of question w/ bullets. (no sentences; phrases.)
Only narrative
① areas of sensitivity
② important to make pos. statement
③ attached are points.

Another page (right after cover page) Admin
3 sentences on what wants
to accomplish in SF. Maybe
get into

Cover page

Memo to Craig Fuller from CED.

Please call if need more material
very important
Like to discuss

* How to look at allegations of wrongdoing.
Wants this for 11³⁰.

* { Brenda - make sure Carol takes notes
to 1:30 mtg.

"Don't condone improper destruction."
Totally committed to enforcement

Take allegations seriously. No
knowledge of it.
Confidence in his people. If
are problems will certainly
take action.

Characterize allegations.

Put shredding in w/ Exec. Priv.

One claims of shredding.
Why not put halt to all of it
by turning over.

SDE

① instructed top aides + sent to lay on table concrete proposal.
Recognize their duty; they need to recog. ours oblig. to enforce law.
Waiting to hear back

Laid out concrete proposal; meets Levitas bottom line that Members of C. have access to docs.

~~Hence~~
We can't enforce if spending all our time on this. They are shutting enf. down.

[redacted]

Because of unwarranted alleg. eroding public confidence.
Outweighs our legit. interest in

'cut we Shoddy

Ex. Priv. - resp. people understand that every assertion not covering

② Don't condone.
Every evidence coming to DoJ will be looked at by career people in normal prof. manner

Won't tolerate

③ Firmly committed to enforcement of environmental laws.

Distressed that this makes it appear he's not committed.

2 prong program
- Spend $
- force others to spend $ to conserve fund.

2 parts for SF

① Clean up
② Sue

Must have balance

Have
Have settled ____ $

Complex law –
Congress saying sue, + send $.

Record pretty good.

① Fund clean up
② 106
③ 107

Even if clean-up, we go back to sue them.

Seymour

① full surface cleaning
no State $ 50%
Lady from LWV. Monster in back yard.

② Trying to get things done now. Avoid long legal battles.

1:15 – get draft (or by 2:30)
1:30-2:30 DAG

3:00 press

send to Dep. by Brenda.

[illegible] 2/1

2/15 CED MW SDR

Will get me copy this afternoon of Schuldy letter to G.

Proposed statement

Part 2

Act passed month before I took office

2000 notice letters
started SF actions at over 100 sites
obligated over $ in
cleanup activity

filed over 2 doz ct. actions under SF

even obtained 1 crim conv.

settled additional 2 doz civil w/ privately financed cleanup of
over $

~~Ag~~ The US actively negot. w/ resp parties to achieve cleanup of nearly 60 add. sites

Fed. judge recently said "Agency's approach in SF cases reasonable from point of view.

Part 1

Govt goals in implem of SF is to get cleanup as fast as possible to protect health, wf

To stretch 1.6 b fund as far as poss
EPA

tries first to get ~~cleanup from~~ the people who put chemicals there to clean up the site

Wherever can't do that, ~~[illegible]~~ is policy to make them do it.

If they won't SF pays for cleaning & we sue to get $ back.

# check #'s - one 25 diff from 23.

"Starting from scratch we created a completely new office

↓

Then.

Most complaints about specific SF enf cases come from cos who think we are being too tough on them

MEMORANDUM OF CALL

TO: Ann

☑ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Michael Green

OF (Organization)

Attorney from California

☑ PLEASE CALL → PHONE NO. CODE/EXT. 415 9814220 ☐ FTS

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

between
10 and 11

RECEIVED BY	DATE	TIME

63-108
U.S. G.P.O. 1979-281-184/9

STANDARD FORM 63 (Rev. 8-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

EST COPY AVAILABLE

Previous editions usable

TO:
Alan

☑ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Michael Green

OF (Organization)

☑ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

415-981-4220 or

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

Region 9 at FTS
454-7455

RECEIVED BY	DATE	TIME
	2/17	9:05

63-110 NSN 7540-00-634-4018 STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6
☆U.S. G.P.O. 1982-361-529/205

BEST COPY AVAILABLE

2/5 HHS Grinstead 245-7752

Ft. Smith Ark PCB Gen. Counsel
Missouri dioxin

30-40 potentially troublesome to
But probably not related to enforcement case

Call Leifer

① relate to conversations between CDC + Atlanta.

② Have approached us.

③ Don't go into Palotta. Is pending
crim. investigation. EPA doesn't
need to know about this.

HHS doesn't want to deal w/EPA.

Grinstead had

Are EPA + CDC documents

Independent request to HHS from Dingell.

HHS wants to coordinate + use same
standards.

- [illegible]
- Ogden [illegible]

Biros 302-3066

2/5 Wyatt 6:45

Oct. 21 notes re: Stringfellow area mentioned but don't exist. Must be typo.
Copies dates 20-22 to show no page

#44 - Region shows 21 not 20 pages.

#43 - Region shows 12, not 8 pages.

#42 Also appears that 2 pages re: Aug 21 + 22 may not have been sent to Hdqts.
Book pp. 21 + 22 mentions ST. Often just mentions name. No further reference.

2/5 Green 9:00

LA -
mtg. on Aerojet last Wed. or Thurs in Moses Lasky (atty for Aerojet) office w/ officials from State. Secretary interrupted mtg looking for Lasky to say Rita LaVelle called.

He will try to get more info. Story going around Region 9.

2 low-level admin. types from State Health Dept told him. One apparently was in meeting.

=

(May be lawsuit that Govt not involved in.
Some of these may have been turned over

GC at HHS want to deal w/ ~~[illegible]~~ DOJ not ~~[illegible]~~ EPA.

Are we arguing ~~that~~ in any of our cases that EPA standards ok.

Need 11:00 answer, because is talking to his GC then.

2/16 Larry -

Do they CDC object for any institutional reasons for release of these documents.

There is between us & ~~[illegible]~~ EPA.

(Thinks we should be CDC's lawyer.
We should make ES ~~[illegible]~~ determination w/EPA

No reason for OLC or us ~~to~~ see them if EPA doesn't ~~want them~~ care if they are turned over.

Unless LNR ~~[illegible]~~ has reason not to do so, we should turn them over if EPA doesn't care.

SDR

① We ~~[illegible]~~ Think EPA should look at it. At a minimum, see if EPA documents going up. If they won't, we won't put a hold on it.

② Make sure CDC keeps log of what went or at least make sure it can be reconstructed.

* ③ Send me Palotta copy. Maybe to Keeney

2/16 Wkg. Group LS, LP, GW

? Will we get transcripts.

Check w/ Card on status of crim. case. Did it go to Pub. Integ. Section. Jenny ~~B~~ McDowell.

Leiter - get last Howard/Levitas letter.

LS - doesn't think Dingell will go along w/ Levitas settlement

Larry & Laurel to do draft on retracting resolution.

① Resolution
② New subpoenas
③ New ~~[illegible]~~ docs at EPA.

Does Gorsuch know of tapes.

LS - Dioxin tracking list.
If give over to state w/ strings so it's held as tightly as if in EPA, might be argument that could not w/h from 3d party.

Except, here is Congress.
Would have to argue that state was like a contractor, who was acting in place of EPA.

General consensus is turn over tracking list.

What are they doing about Lavelle's calendars?
Due tomorrow.
If turn over today, won't have to testify tomorrow.

Dioxin documents -
Need someone checking.

Need someone working at high level on nothing but this subpoena request.

Need to think about asserting privilege again.

Pres. directive
- can change concept of what ES is, or
- can trade on language that says don't w/h evidence of misconduct, or
- Pres. must amend directive

Would Pres. want to put in writing.
G will probably want it.

Are Mining Wastes covered. Has this issue been resolved.

Why is ~~to~~ Dingell zeroing in on TC + BF.

We need chart on all outstanding ~~docum~~ requests. + their status at EPA. Leifer doing.

Leifer

Tapes are in OWPE.
- Kosakowski checking x 4814
Branch chief in Lucero's office

2 micro cassettes
Remedies: } Nov 29, 82 / Litig. team

Thompson
Hughes
Green
Wyatt

Will G go up.
Are they turning over today
How much have they got

2/16 Olson

Has spoken to Schultz + Fielding. They agree it should be done today.

Let EPA take it up. Be present + keep custody. Play for Levitas + let him copy if they want.

Today

Must treat w/ discretion + confidentiality.

(Leave to Carol how to communicate w/ EPA. And whether she wants to bring EPA to 3:00 meeting w/ Levitas.

Give Levitas opportunity to hear + copy

Olson –

Certification offensive ; will take lots of Adm. time

Their agreement overbroad

"wrongdoing" – use ours language
May be materials that go to g.j.

Prevents normal ~~for~~ weeding of files

Definition of ES too narrow

#3 wrong on process

p3. ¶3 Need process for removing redacted portions cleared up

Need assurance that is confidential

p.3 ¶4 undercuts whole agreement
at least get non-waiver

Brand

¶ 1.(b) why reference AG memo
if defined in this document

¶ 2. too broad. Prefer narrower
definitions.

¶ 3. staff review
Doesn't think Schmults + Levitas
agree.

¶ 4 (c) wants "Subcommittee review"

Schmults + Levitas must resolve

¶ 5.
Levitas could use best efforts to get
resolution.
Thinks should go forward w/ procedures
first.

They can't deal w/ "simultaneous" procedure.

Perhaps could have Exec. Session where
we turn over 64, then w/in few days
Subcomm. retracts

We will have memo from Prez. to G directing
her to follow agreement + attaching it.

page 2
2 dozen are now actually concentrating on
at various levels of goal. not just EPA
Active in Region I, II & III.
5 in NY

Prolman – "Reasonable" # of sites

p.1 1(a) – we want notice before 1st visit.
Prolman can give lots more than that.

p.1 0
was
Levitas
p.4 "Wants assurance that will
be diligent search. 40 CFR 1226

We need to talk to EPA about what can
be certified to

¶ 5 – line 6 "demands."
Object to
Plural
Must limit it to this Committee.

Problem is w/hearing. Can't write report unless
is in public domain.

2/17 Per CRO
EPA wants precise instructions from Pres.
on this agreement + they must be clear.

Take it all way to Levitas w/o intro.
Then put our intro in.

Ask Dep. whether to take up version showing insertions & deletions.

Enough copies of new version, & both old versions for Olson, Ram, Dep, CED + AAG

* Talking points for Gorsuch to announce what deal we cut.

Will Levitas buy letting G announce it.

OPTIONS FOR PROTECTION OF MRS. GORSUCH

1. Obtain assurance from the Speaker of the House that a Resolution be passed absolving Mrs. Gorsuch of any liability as a result of the prior contempt resolution. If this assurance cannot be obtained, must secure the following:

    (a) United States Attorney decides not to take case to Grand Jury

    aa. On grounds of the defective subpoena.

    bb. On grounds of Executive Privilege, etc.

    The contempt case against Mrs. Gorsuch can then be dismissed and her record cleared both officially and personally.

2. Can still proceed to negotiate on release and safeguard of the documents to the Congress in the spirit of Judge Smith's Order.

3. If the United States Attorney decides to take case to the Grand Jury, then a pardon must be sought and obtained from the President, or at least a guarantee of such assurance.

4. Can still proceed to negotiate on release of the documents in the spirit of Judge Smith's Order.

2/16 Dolan

Maybe should be compiling white paper on DoJ involvements.

Will talk to McConnell re: briefing Hill.

Breshears Hoffman
Public Info
Lavell ?

2/16 Leifer
2/14 + Dingell

Specific steps to secure documents

2/15 Dingell

Wants to know why 2 crim. invest. positions not filled. + whether will convert one (in hdqtrs) to atty.

Only one dioxin document pending review.

HHS – they should call Leifer, Mays or Yamada.

Knows nothing of request to HHS.

2/15 2/3 meeting in Lasky's office in SF. Participants
- Lasky
- Mary King
- someone who Mary though was GC of Aerojet

It was the unidentified person who got call.

Meeting was on Aerojet ~~[illegible]~~ site.

2/16 Grinstead

Request from Dingell. Due last week. They sent interim response saying that would respond ASAP.

Ft. Smith, Ark. PCB site. Area around a particular house. Someone put contaminated oil around their house.

Have notes of phone conv. & memos, w/ EPA or internal. Generally CDC saying is emergency & should invoke CERCLA emergency clause.

Only one is ~~[illegible]~~ or might be ES. Notes & Memo by CDC doctor re: conversation ~~from~~ w/ Palotta.
May undercut Palotta's testimony(?)

Cleanup type questions & use of SF authority.

Dioxin
- scientific. Analysis of various sites. Show disagreement

What controls are needed by EPA in testing program. Some CDC concern that EPA quality controls not up to CDC standards.

2/17 Keeney, Caruso, Ted Olson, Jeff Holt

Streamline on working level

New letter recvd from Schroeder re: Sanderson

Leahy - wrote sometime back re: Sullivan
K has substantiated that Sullivan + Procaletti
* hiring on political basis.

{ Tell Keeney + FBI about Seyria Royce + also green books.
Not criminal.

Hendricks will supervise:
Individual attys on each item.

Lowell + Keeney to handle.
Jeff to be actively involved.

Sanderson + Horton ongoing invest.
Factor in new allegations.

Sanderson - related to whole issue.
Horton - more personal.

* make investigations notebook

Phases

① gen. substantive allegations
② allegations of perjury
③ " of cover up.

Should have 1 person in OPIA.
DeCair. + his asst.

Dep. wants Ted to stay actively involved.
No need to tie up ~~[illegible]~~ McGrath.

2/17 CED, SDR

Get copies of tapes for us. Have Mike Green listen.

CED - tell EPA about HHS.
If they won't look at them, we won't + HHS should turn them over.

Give Kenney ~~[illegible]~~ rumors on Aerojet.

1. Cruising
2. Briefing + redaction
3. SC review

2/12 Told ~~Leifer~~ ~~the~~ Grinstead that should call Mary Yamada or Leifer; that EPA should make ES decision + refer to us if is ES; that if EPA wants to release everything is OK w/us.

Told Leifer of conversation w/ Grinstead. That decision up to EPA; ~~[illegible]~~ Described Palotta doc + everyone's concern that it go up promptly.

2/17

Agenda for C&D / DAG

Explain
List of DOJ contacts etc.

Inquiries

Circulate list for phones #'s.

2/17 - Beth Nolan -x 3711

Atty-client w/ respect to agency.

Don Nautkiss told to contact
Carol or me.

2/18

(✱ The Chairman of the S– will ~~make~~ employ his best efforts to ~~insure that~~ obtain a resolution by the full House purging ~~the~~ H.R. Resolution 628 (?) holding the Administrator in contempt of Congress on Dec. 16, 1982, and stating that there is

✓ p.1 - reasonable advance notice to provide EPA opp. to segregate docs.

✱ p.2 - Finker w/ certification
add sentence ~~that~~ ES docs. + say

govt. attys, invest. + Expert witnesses
or individuals involved in CERCLA enf. process

(p.3 ~~4~~ - make Olsons changes on p 3+4

(

2/18 CED, SB [redacted] Mike Sallio

CED Still very concerned re: certification.
① Must clear w/EPA.

Schmults has approved staff access as we wrote it.

Continues to reflect on resolution.

Problems
② - criminality exception
③ - definition

"The Subcom, through invest. staff .. will designate"

BEST COPY AVAILABLE

#K.632

~~① Options on resolution~~
~~② Talking points for G to announce~~
~~Schmults/Levitas~~
~~③ Timing~~
~~④ EPA wants precise instructions from Pres.~~

2/10 Mtg at Webster's Office

(

Bill Hendricks is contact for Crim. Div.

* ① Lots more correspondence

② Want list of who is assigned to what.

③ Lavelle documents re: Stringfellow

EPA can do only 170 sites.

APB. We can give them list of EES attys. assigned to these cases.

④ Perry green book - Yamada.
Perry testimony in book

(

APB Pass out copy of Lavelle lexitron memo *
in briefing book attached to Scheuer letter -

⑤ Contact list

⑥ We have W/H documents.

⑦ Distinguish Levitas/Dingell

Alan Carver - Perry green books

Hendricks has memo on areas of focus.

(

Jeff - to
Get list of names of all who are working on this.

SF [illegible]

FBI - must get thorough briefing
also PI lawyers.
Ramsey to give thorough briefing

[Need EPA org. chart etc]

Send to Fielding immediately.
Review ~~of EPA~~ when meet w/ G

Ramsey to brief [illegible] agents + PI lawyers
→ what do we need to give them.

2/18 Keifer

Howard/Levitas letter -- Perry wants to take out part about subpoena.

Trying to answer all requests.

Will send us ES material on Dingell (to get it up to testimony 2/25)
Levitas by 3/10.

Crazy over there.

Will be in Mon. at 10:00 am.

1. Need to get Agency working on subpoena at high level
 - esp. dioxin

2. ~~[illegible]~~ *

3. Mike Green - tape

4. CDC

5. Laurel & Larry doing resolution

6. Dolan - will talk to McConnell re: briefings

7. Presidential directive

8. White paper

MEMORANDUM OF CALL

Dr SINK

Previous editions usable

TO:

☒ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Daryl Grunstind

OF (Organization)

Asst. Gen Counsel - Health & Human Sv

☒ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

245-7752

re: request from Dingell re: Missouri Dioxin sites & Ark. PCB site

RECEIVED BY	DATE	TIME
	2-4	45

63-110 NSN 7540-00-634-4018 STANDARD FORM 63 (Rev. 8-81) Prescribed by GSA FPMR (41 CFR) 101–11.6
U.S. G.P.O. 1982-361-529/205

P.O. - Huey

EST COPY AVAILABLE

Bill Evans - w/ Mike Thomas in RI

2/18 Bernie Cooney - represents one of cos Lavelle
had dinner with 857-0547
Dunaway, McCarth + Dry

Are contacts w/ his co. (won't say which)
being investigated.

2/22 Kearney Alan Carver - Kearney says refer Cooney
to him. 724-7137

2/22 CED, MW

Today - who at meeting
where
why 2d tape blank
what was discussed

Question - do we need letter from Pres.
what is schedule for release

2/22 Mays, Perry, CED, MW

Jack Keeney said to send requests to him for letters.
Dolan checking w/ Keeney.
OK w/EPA to release.

* Prolman came over this morning:
1. Bridgeport, NJ Zuzpwicz } wants these 2 first
2. Seymour Stannard } ASAP.
3. Stringfellow Green
4. PAS Oswego NY Gw Pollution Abatement Service?
5. Keefe - N.H. ~~Gw~~ Gw/Erica
6. Ottati & Goss ~~Dolgin~~ Bill Evans

Procedure agreed to w/ Prolman:

3 categories
① ES
② confidential
③ all the rest -

Can see & copy 2 & 3.
Category 2 will be stamped conf. & atty so classifying will sign, so Committee will know who to contact.

✓ Get memo on what categories

I #1 - Yamada this morning put in
peer review process.

They will highlight ES portions & send to us.

Instructions from AB - frugal in use of ES:
"only if" case would hinge on it."

CED passed on ESchmults idea of putting paper
over ES docs. in file. Perry very enthused

March 10 hrg. w/ Dingell. Anticipate assertion
of exec. priv.

?? Dec. Perry testified to procedure (?) in 3 stages.

P asked Fielding for new instructions from Pres.

Yamada - white paper method not good. Have
to defend to Dingell;

RC have to cob Wed. to ID any other docs
on the 5 Dingell sites
Should complete Hdqts. peer review by cob Fri.

They Can't get to Stringfellow until Fri since
Heidi out.

Will ID & list separately the maps etc that
are too big to mail in!

By March I think they will be in position
to turn everything over.

Yamada - on 5 sites doing complete inventory
of all documents Due cob Monday.
Inventory will include duplicates w/ marginalia.

Paul Perry - Yann, Mays, Lefer, Steele + someone from Brown's office + staff atty

{ Wed - BF
Thurs - dioxin
Fri - Stringfellow + TC

Will go over all current + prior WH docs with staff atty. Will black out ¶s. Give Perry memo on what deleted + why.

1. is there anything ES + why
2. any indication of improp + uneth conduct

Perry will get:

① Recommendations
② highlighted copy
③ redacted copy

{ By 3/2 will have all 5 sites done, reviewed + know what all docs are + what are ES.

Strategy - don't just offer Dingell some deal in abstract. Actually take him docs. in redacted state.

12/10 site tracking list - was ES because of a few names. Can black them out.

CED - definitely must keep up 3 tier process.

* Our lawyers to go to EPA.

* Must clarify CED memo to Penny.

Ramsey to review SF on phone w/Green ASAP.

Perry is record as saying all Stringfellow docs should be released for current exec. sess. hrgs.

Perry wants new instructions from Pres. Must clarify. Refers only to 51 on which Pres. saw index.

Yamada - wants Civil involved up front. on March 10.

Perry - go injunctive route this time.

2/22 SDR -
Internal DOJ memos eg. accompanying consent decrees, ~~sta~~ or status reports dont go to DOJ.
Routine customary practice not to send them.

SF - not assigned

Dioxin - if no DOJ memos, stay out of it.

2/22 Green
AB coming to Region IX to make speech.
Crow wants her to talk about SF. wants to give positive aspects
Will get set of "principles" ~~get~~ ~~have discussions~~ tomorrow. ~~Will g~~

Then $ offer later in week.

Doesn't know why nothing on

SF Region IX 6th floor conf room
Green
Barbara Grissom - engineer - Water OWPE
Laurel Chun - Reg. IX engineer - Toxic Waste Mgmt Div.
Kathleen Shimmin - Laurel's boss Reg IX
Branch Chief, ~~Toxics~~ Branch Compliance & Response

Several - from FIT were there
Craig Saunders
John Moe
Mark Ransom
} contractors

Nov. 29, 1982
Tape made because Heidi Hughes

Purpose - so FIT could take tech. data
re: sits + critiques our cases.

Discussion was very technical; specific
wells + problems.

Mike Green - will stay through end of week
to finish complaint.
May engage in some negotiation
this week.
Not sure settlement will work

Heidi never listened to tape more than
about 30 min. so doesn't know if
was ever anything on 2d tape.

Definitely put 2d tape in + it ran
for sometime. All she's been told
is ~~that~~ its garbled

Tomorrow - 10 am mtg w/co.

Probably will be on Thompson's # Thursday

2/22 Steve Baer

CDC - working w/Kohanek. Told him EPA to make final cut; ~~[illegible]~~ + he should ~~[illegible]~~ go along w/it, even if we disagree, unless he really objects — then talk to me first.

Dioxin -- most of it already public.

2/23 Grinstead TT
3 categories requested
① Copies of correspondence between V. Houk + Lavelle. Palotta document not part of that.
② ~~[illegible]~~ All Missouri dioxin ~~+ Ft. Smith~~
Bulk of documents
③ ~~[illegible]~~
Corresp. between CDC + State Health

HHS only sent EPA the documents they were releasing. Palotta document is not among them.

2/23 Hudson - Jan 5 Kirk Sniff memo.

2/23 Get Seifer info on Berlin - Farro.

2/24 OLD
They agreed w/Levitas that someone from DOJ would take the documents up.
Someone from EPA probably should go too.
Let them choose who.

Send redacted docs over ASAP. to Leifer.

Probably need to take ½ dozen sets up Friday.

She & Schmults cleared letters to ee's.

2/24 Leifer

Current, Schwartz, Dalton, Lamar were interviewed
Don't think any more going forward today.

Lee DeHihns - OGC is handling.
R. Mays may know.

None of EPA people testifying today.

2/24 Baer

He & Hohanek agree ~~that the~~ none of the docs they have seen need to be withheld.

2/24 Grinstead

- Thinks Committee knows about "Palotta" memo.
  Nov. hrngs. - Nov. 19th

Emphasized that is not DOJ investigation

Palotta went up w/ Lavelle.

[illegible] – Leiler
View there is that need unanimous consent + if they think it should be released.

Lee Thomas, Verdanzing

We want notice + a right to be heard.

Sent CED chart on requests.

2/24 Evelyn Prdman called
– wanted to know what restraints were to be put on tapes.
Didn't say anything about documents in Exec. Session.

CED coming in at 5:00

2/24
Reid
Nothing on face ~~reflects~~ of documents

① nothing criminal re: these 64 docs. withholding
② Docs. on face reflect no criminality.
Is not addressing unethical conduct.

Doesn't see ethical violations. Don't rise to that just because are political.

Memo Jensen will rely on to talk to Hill.(?)
Due tomorrow.

CED 2/25 Staff Mtg.

Burden on us, not EPA.

Go through files w/EPA.
Be as unobtrusive as possible.

Clip w/paper.
Will eventually be pulled

We are available ~~whenever~~ to go to hdqtr or regions

① Justice written
② asked be prepared
③ case development type docs.

Not effort to ~~ever~~ hold back embarrassing info.

* Memo to staff describing EPA peer review, etc.

H __ CED, MW, SDR

Keefe - do that ASAP

Bridgeport
Stringfellow

OLC probably supposed to take care of memo from Pres. to AB

2/25 Perry, Yamada, SDR, CED, MW.

Notes of Hughes, Strickland + Perrack.

March 4 subpoena - re: Stringfellow

Luger badgered the Agency.

2 boxes Chem-Dyne docs in Region V missing(?)
were sent to be xeroxed.
Hdqts. just found out.
Yamada has ordered thorough search.

Tape - some statements extremely enforcement
sensitive

Mary to call Perlman. Must keep confidential.
EPA willing to ID enforcement sensitive
parts.

2/25

Richard Mays — Call him Mon

5 sites — Hdqts. only.

	OLEC	OWPE	
Bridgeport -	11 pages	110	
Seymour	46	600	Lloyd
PAS	65	90	Hammond
Keefe	31	350	Yu
Ottati	311	100	Dolgin Evans

Penry
① OWPE delivers ES docs to OLEC
② OLEC atty highlights ES material
③ DOJ to review at OLEC.
Highlights in different color
④ Document goes to Yamada w/justification (form)
⑤ Yamada or Perry makes final determination.

✓ Stringfellow

Mays committed to proposing redacted copies on Bridgeport by COB Wed
EPA thinks can get done by Tues + give Perry Wed. to review.

✓ Frank Barber - Bridgeport + PAS
Says can get PAS by cob Wed
Give to committee cob Fri

✓ Seymour - attys - cob' Thur
Mon

✓ Keefe - cob Wed
cob FRi.

✓ Ottati + Kg. Evans - cob Wed
Mon

Deborah Witty

Debbie Dalton

Doug Farnsworth

2/28

I MW-TF

Can Heidi release redacted documents to Dingle. No

Fielding negotiating w/ Dingell. Walker checked w/ Schmults. He said not to release.

Fielding will be handling Dingell negotiations from here on in.

2/28 Laurel

Simms thinks we are doing narrative. If not, suggests we do so.

2/28 Dolan

Thinks Carol can decide whether to do it in exec. session every time.

2/28 Bob Brooke Tybouts

EPA wants to release document
will talk to Stauffer & go thru procedure.
Neither he nor Dragna think it should be withheld any longer.
May fit w/in exception in decree that could release "if required by law."

2/28 Barry

Bob Whalen - on AA's Lee Thomas (Lavelle's replacement) staff called

Brad Wright - Lucero's staff - on Chem Dyne
Was asked to release 2 docs.
Whalen told Wright that DOJ not to be consulted in deciding either to produce or withhold.

Fred Stiehl very nasty.

2/28 Gorman

Florio 2/9 request

Will make available in N.Y.

2/28 MW

~~[illegible]~~ White House did OK turning over redacted documents to Dingell.

2/28 Bob Wyatt

Dingell subpoena's being served today.

2/28 CED

Don't do anything yet

3/28 Mike

Monihan - requested docs from Santa Anna Water Control Bd.

Minority Counsel for Senate Public Works (Monihan) toured site last week + may go back.

3/28 Wed 10:00 am CED, SDR, MW

Bridgeport
Seymour
~~Keefe~~ PAS
~~PAS~~ Keefe
~~Ottati + Goss~~
Stringfellow
Ottati + Goss

Prolman's order

Brief Levitas on certain of the 64 documents. Give him ~~redacted~~ unredacted copies.

Also wants redacted ES docs. on Bridgeport.

CED thinks can get Stringfellow there Wednesday.

Wants to take up some Seymour docs. too.

Perry sent out memo today re: DOJ participation.

G wants 3 tier review to continue.

B+F docs to come over tomorrow

Liotta to handle response to Dingell

Take 1 copy of Stringfellow + Bridgeport.

18 § 595

OLC doing Rodino letter.

Mtg.

① ~~[illegible]~~ Do we need new memo from Pres. OLC

② OLC - responding to Rodino

✓ ③ 3 tier review - what requires that
Burford demanding this procedure(?)

3/1 Working Group

Supoena - Region IX
return date

Hughes - did she turn over docs
who is accompanying them.

Status of 2 drafts.
Did Perry letter

LS - If plan to fight Dingell subpoena, then need
3 tier review.

~~[illegible]~~ Newly discovered docs on Dingell's 5
sites should be reviewed by OLC.

LS - don't need to change Pres. memo.

Coordinated effort on narrative.

Perry's Dec. 3 testimony has some
narrative (some incorrect.)

Flatts — re: Syncon
3/1 Bob Brooks

Sent Gloria technical material last week.

Messenger is coming today to get legal material (non-sensitive).

Planning to file w/ bankruptcy.

Are planning cleanup.

3/1 Mays
Bridgeport — only 4 witness statements (total of eight pages)

Want to w/h all.
Have prepared description + rationale.

All else available.

Frank Barber keeping working.

Stringfellow — I will try to get at least nonsensitive ones done.

Letter on tape went this morning.

Doesn't know status on OMC.
Treating just as ~~[illegible]~~ Dingell.
ie Still withholding entire docs.
Not yet redacting

Lots of docs. delivered.

Will send us info requests & info ASAP.
+ send us weekly status reports.
Will.

3/1 Soe, Watts, Mintz

Get calendars
Notes, etc.

Gailin - dictate chronology:

3/1 Watts
Brookes said tech. docs went to Florio
Last Wed. Price too.

Leifer may have

Barker told Guerri what was going on.
Thinks Lloyd approved

Brooks reviewed ~~the~~ tech. doc

They have lists at OLEC of what went out
Not sure that tech. people do.

In Syncom everything going except
litigation report.

Price not clear. In discovery?

Some parts of lit report in Syncom could
be released.

3/1 Hendricks

As long as are maintaining copies of EPA docs, can release to Committee.

3/1 Lee Tyner

Kin-Buc. Talked to Brooks.

Almost no Chem Control documents.

3/1 SDR

Nothing to be done about lack of input on Florio 17 sites.
Notify Dinkins.

3/1 Heidi

10 copies to Richard tomorrow.

Is redacting. Told not to consult w/ DOJ?

3/1 Hird

Reilly Tar – Dingell wants by 3/18.

* ① Heard rumor (doesn't remember from whom) that RT coop. ag. held up because of gubernatorial race in state (?) wanted it held up (?)

Dingell said this is reason for investigation.

② Rob Pollack - consultant to Horton.
Wasn't supposed to be involved. Was GC to RT.
May have been. Was internal EPA invest.

Washington Post today called Erica, Kosakowsk
& Lehninger, & EPA regional attorney
about Polkacek issue.

3/1 Yamada

Bridgeport, PAS, Seymour

Thought we were to turn over redacted
copies.

wants

Are we going to WH on redacted parts.

3/1 CED, MW, SDE

Levitas wants schedule on ~~next~~ first 6.

① when can go to Regions
② Hdqts
③ redacted versions

* Must have schedule for the 10:00 am
meeting tomorrow.

Carol thinks Mays too slow.

Meet tomorrow 9:30
to go over 8 documents.

Marty Get a color that will xerox so can read
Thru on redactions.

Call Perry early

9/2 CED, Mays SDR

Seymour, ~~[illegible]~~ Bridgeport + PAS non-sens. docs
ready for review.

Molinari + Roe

Send whole document to WH, while doing
redactions.

EPA has ~~[illegible]~~ special black out tape.
Kathy Summerlee

Will have PAS justifications by end of today.
All sites should be done by cob today.
Thinks can have redacted versions by Mon.
Dingell letter to Pres.

PAS - Fri cob to him

Can have access on all 6 sites - Headquarters
Redacted versions cob Mon PAS
cob Wed Seymour

Limit to
OWPE + OLEC Hdqts.

PAS - may be files in ~~off~~ Water Enf. + Permits
in Hdqts.

Won't hold up turnover so our lawyers can get to
region

5 Dingell sites - all ~~is~~ mailed into Hdqts.

Agenda

Levitas #2 p.4
#20 last page in error (get it back)
Dingell – nine already available

Bridgeport

Schedule

Bridgeport
Seymour – now
PPS – cob Wed March 9
Keefe – cob Mon
Stringfellow
Ottati. } next week cob Fri.

We need notice on regions.

3/2 Executive Session

Cong. Nancy Johnson & ______ asked to have tapes made public.
Pridman has said is ES, even before got letter from Perry.

These tapes incomplete.
2d tape - some more, then nothing

5 - Date of memo.

Written after settlement (?)

Are 2 issues
1- worried about groundwater standards

~~3~~ - GW study. Who does it, what are parameters.
What is time frame.

2- will redo CWA. Interrelates w/ GW,

Texaco - ?
EPA approved it. Co. let off for $400T
when cost $31M.

Time & dimension of GW studies.

They have been
Redactions
Seymour - March 9
PAS - Mon March 7
Keefe - Fri March 4
Ottati Fri March 11
Stringfellow March 11
Will work out Regions.

Erica
Bill

4 - released w/ Exec. Session

Want statistics on # of referred SF cases. *

6 - Pridman - wanted to know if were attachments.

Roe - must revise laws completely because of magnitude. Pretreatment (?)

Has Congress provided enough $. Is 1.6 enough.

~~Levitas~~
Roe - how long did it take to get estimate for GW clean up costs.

What is time limit we are faced w/in getting technical support ~~for~~ from EPA.

Roe + ? (Richard) - want report from EPA on GW?

Roe # of cases where have completed groundwater studies.

Homestake - want unredacted versions

Levitas ? { Why take 2 years. Any incentives to be built in to avoid 2 years of manipulation. in Homestake

# 22 -
Want to see it ~~[illegible]~~ in camera. Reviewed Okay ~~Pridmore~~

# 20 — Want [illegible]te. Reviewed in unredacted form by Pridmore
Concer[illegible] about delays in Homestake by
[illegible]nice.
[illegible]ried about

At ne[illegible] session may want to go into
P[illegible]gport + Seymour.

[illegible]e ½ way through headquarters files on Seymour.

3/2 OED
Yamada —
28 CFR 50.15

Some employees want to take counsel
with them to Dingell's committee.
He won't let them bring Agency counsel.
Will DOJ represent.
Yamada looking at 50.15.

3/2 Mays TF

Radio rpt. on statement by Pres. Will turn over docs.
Lester Brown called. Would release all
documents.

Send our attys. look at 6 files.

Hays – let him know which questions
we will answer + which EPA should do.

Will check on cost criteria for Rae

Perry's hearing Dingell postponed until Tues.
Will be open session.

Pres. statement ① All docs available to Cong. under
same terms as Levitas

② Investigation will continue

③ If Dingell has anything should turn
it over.

3/2 Erica

On Keefe they have not started segregating files.
Deborah Dalton
Deborah Woitte - Hdqts lawyers files

Took an hour to persuade Elkins in technical office that they should segregate files.
She talked to Whalen.
Cheryl Wasserman (?) came in too.

Ramsey called Lucero.

Tech folks in SF office said

John Cross - given Dalton's file to do since she hadn't.
wasn't going to do SF files.

Hdqtrs. lawyers not looking at technical files.

* No coordination ~~between~~ among technical people or between them + lawyers.

3/2 SDE, CED, MW

If problems w/ access to documents, instruct our attorneys to call Walker.

Back off as soon as there is trouble.

Olson to testify before Rodino on 3/10. McConn may also go.
Rodino letter - we should draft response to 1a + b

Documents –
~~Our~~ CED memo to staff, notes on withholding documents, routing slips.

Use Carols declaration to help draft our narrative.

✓ Pull Stringfellow docs w/ political connotati

Check w/ Yamada or Mays re: Dingell & employees.
Was he not allowing attorneys in.

Check w/ Wallace. Can we get Firestone Perry's hearing taped.

3/3 Tungland 3·

Call her when decide which ones EPA to answer

3/3 Mays
Trying to get 5 sites for Dingell ~~done~~ to be done today & over to us.

Ken Pearson
Winston Hays } Supoenaed tomorrow re: green books

Region IX – 4 people subpoenaed
Crow, Thompson, Mardin ?

2 for 3/8
Crow & Thompson 3/14

Is in executive session & Dingell won't let in agency attorneys.

Lamar & Dalton hired private counsel.
Committee tells witnesses not to reveal what happen

Strickland testifies also
Hughes, Schwartz, Dalton & Miller.

Responding to Levitas questions
is lowest priority.

3/3 Sandals

Lester Brown has called Dragna. Referred
to Ramsay.

3/3 Olson TF

Janice Pissato x-2030

Betty - PAS hdqts. pretty much done.

3/7 ~~Sa~~ Dolgin

Now getting inquiries on Johns-Manville.
Settlement memos.

3/7 Sandals
Lester Brown - reviewing Chem-Dyne 225-6427

Deborah Woitte - indices
Barry spoke to him. Wants to see documents produced
to Δ's. Barry has no objection

Told him to wait 'till Ramsay got back.

3/7 Junglund
Doesn't know status of PAS.

3/7
NF

1 - Role of DOJ / exec. priv.
2 - everyone's role in preventing staff interviews
3 - green books
4 - Lavelle's recusal -
5 - adequacy of resources for enforcement

Perry admitted should have recused self from Chem-Dyne

Will issue series of opinions to DOJ personnel.
Habicht said would focus on enforcement.

~~Also~~ Perry said DOJ should have declined crim invest. + gotten special prosecutor.

References in green book to Sonia / Lavelle + Stringfellow

Only polit. reference was one note - Thompson.

Reilly note - Pollock.

Perry denied knowledge of political manipulation.
Seith Heights mentioned.

Seymour

Lawrence Weiner, Region II - memo on boosting candidate by settling.

Told Olson about June ? fax "Eyes only".

Conditions on ee's testifying.
Administrator's decision on letter to Dingell.

Ee's - Walker concerned that ES docs not be released to ee's.
Mary + Marge worked out instructions

Perry - said request to represent ee's led to DOJ withdrawal.

Committee asked for all correspondence,

Dingell focused on when Perry knew about LaVelle's conflict ~~&~~ intimating Bob Perry cover-up.

3/7 Richard Mays

Went well

Have 7-8 docs in PAS. Hasn't done anything with them.

3/8 Lester Brown

Wants to do today.

Δ's sent 70,000.

Wants to look at discovery docs. Have seen D.C. file. Haven't seen regional files

Synar on Judiciary).

Easy place to find out about EPA documents

Lots of invoices

Wants ~~index~~ to check docs. against index.

Wants to take notes on docs.

Trying

3/8 CED- JF

Wants to know if Committee saw Heidi Hughes notes. Were they part of the 35 shown to Levitas & Dingell.

3/8 SDR

Mary sending documents over.
27 documents on 5 Dingell sites.
ASAP review redactions

3/8 3:30 - Carol's office

3/8 Dolan

Be fair to committee. They

Whether or not

Lester Brown - will bring copy of letter from Synar. Sandals will be here.

3/8 Laurel

One or two staff people saw Heidi Hughes notes back in Oct. Maybe Regnery. If they didn't catch it why should we have. Oct. 14, 1982.

① Hughes notes 2 pages
② Eyes only memo Doc. 38
③ State audit

④ recent memos

Saw something in 3d set of Stringfellow documents. Had Gorsuch name + Daniels at a meeting. Notes of Aug 80 (?)

may have seen
Kathy Summerlee notes of the same meeting.

3/8 CRD, TL, RDR, MK, NF 3:30 pm

4:30 mtg. w/ AG

Check w/ Laurel on status of Rodino letter.

How did Simms get involved.

9-30-82 - Stringfellow referral

Issues:
employee interviews
sweetheart deal
polit. considerations in lit. strategy
~~+ alloc~~ allocations of SF
conflicts of interest
EPA representation by DOJ
- why drop them
- why take them back
special prosecutor
role of DOJ in withholding
assurances to Burford of non prosecution
White House involvement
~~list of topics to discuss~~

3/8 Barry

Put docs in Jose Allen's old office.

Is closet w/ EDS documents.

Barry would want log of any copies.

Non-privileged EPA + DOJ docs received or generated.

Technical reports.
Notice letters + their responses.
Communications w/ generators during negotiations. Request was very broad.

Notes of meetings – Kosakowski.
Weren't privileged because were verbatim transcripts of meetings generators attended.

Depositions.
News clippings.
Trip reports.

Check w/ Dolan as to where Brown is to arrive.

3/8 TL, SDR, NF, KK

Basic decision not to let anyone have docs made between Oct 14–21.

OLC's job is to coordinate w/ office of counsel to Pres.

CED can't speak for Dept.

How much was CED involved in civil case.

* Coordinating memo.
 • Should this be included in Rodino response.

Documents are Presidents

* Pull out relevant correspondence.

Correspondence
- coordinating memo
- Dingell chronology
- McConnell letter

Remind Laurel there are holes in chronology.

Correspondence book
white separators

① corres w/ Levitas
② Dingell
EPA/DOJ letters
Pres. memo, AG memo
~~AG~~

③ Brief in lawsuit (in book?)

④ CED declaration
Perry's "

⑤ withheld documents descriptions

⑥ Quantico accord

④ Schmults → Burford letters

SDR - quick summary on Stringfellow, BF & TC

Dioxin - never listed as hazardous substance under RCRA. Is toxic substance under (?) water act.

3/8 Mike Coreen
Will be in tomorrow.
They are releasing draft complaints.
Atty. in OLRC told him.
Most everything he saw at agency was releasable

3/9 CED TF

EPA package [redacted] here but has problems.
Concurrence sheets not signed.

Didn't bring index

Marty + I will need to do redactions + xerox.

Nothing on PAS. Didn't get redactions finished.

3/9 CED TF

Can get PAS to WH by noon (?).

What about Seymour. Prolman asked specifically.

3/9 ~~[illegible]~~ TT
Just delivered more docs. ST + TC.
Are another 7 or 8.

Seymour - on its way to ~~the~~ him from OWPE. Should be to us this afternoon.

C 3/9 Carl Green

In lobby at EPA. Served by Benjamin SAnthurst + Benjamin Fishcrowe
Monday 1:30 Seymour. [redacted]
Memo + documents
Executive Session. Dingell.
Franzen + Raabe.

3/9 Dolan

C
Christy - minority/counsel. Called to find out who represented Burford.
Told him would be 2 returnable Monday.
Christy not in on this, but said didn't include exec. priv

3/9 Leifer
Planning to withhold. 37 ST docs.

3/10 Dolan
McConnell
Burford may resign. Are working out something
C

3/10 CED
Staff lawyers. Have them work on

C * Talk to Mary + Steve. Go to EPA w/ Mary + talk to Leifer, Mays, Yamada.
re: how we now proceed.

Perry to get letter from each subcomm. ch.
who wants docs. ~~that~~ will abide by agreement.

Frohman was to call Mays.

I will work w/ ~~Christy~~ Zeisler, on questions

→ CED [illegible] should thank. oler staff for efforts

3/14 Dolan
Barry

3/14 CED, MW, SDR, HH 11:50

Rodino - Tues.

1. Letter Sch 15 → Ranford
2. Stan Harris — O'Dair
3. Q & A s

Hank + Liotta → Budget
ee - highest priority in every budget
SDR - statistics
just established env. crimes unit
now have crim. trial in env. case
now have — grand jury's
Need today.

(3/11 McC., CED. HH, MW. SDR   McC. office

AG has McC letter of 2 days ago.

Important to emphasize en. enf. budget.

① budget   every budget approved by this AG has env.
② statistics   enf. as top priority
③ new initiatives ; upgrading to felonies
④ FBI working on investigation
Conclusory - bullets - no statistics.

1 Highest priority
not cutting us
staffing up
are spending it
got everything we want

(Make to work on Congressional ~~[illegible]~~ efforts to
influence us.

3/11 CED, HH, MW, SDR
~~[illegible]~~ ~~[illegible]~~   12:15

Dahi, ~~[illegible]~~ & Dolan to get documents

needs statements to memorize

. Short ¶ starts w/ rhetorical statement
- then bullets.

"Since beginning of my admin ____ etc".

Then ¶ on envir. crimes.
While recently created, have stressed crim.
invest. since very beginning.
(use of crim sanctions in env. cases.
culminated in EC unit.
Credit for EPA unit & FBI investigators.
CWA amendments include crim. penalties.

•other env. enf. activities matured then 10 yrs. activity. Concentrate our efforts on HW sites.

Bkig Q&As.

3/11 Dolan
They will synopsize for AG.
Don't hold up for lots of review.

Kindness v. Symar
Memo should be in briefing

Albosta - farmers wanted to sit in on settlement conf.

Accuracy over literacy on Barry's memo.

3/11
City of Vernon J. Martin
Hightower - staff has called her several times.

If Mike wants list.
Hooker LaFalce

Oberstar - called SOE repeatedly about Reserve Mining stipulations.

3/14 Dolan
Suggest SOR do memo to DAG on contacts.

Mike - concerned when try to affect us - not just status.

U.S. Department of Justice
Land and Natural Resources Division

Office of the
Deputy Assistant Attorney General

3-14

Carol:

Ann Gailis advised me that EPA may be using the "enforcement sensitive" test too narrowly, especially as applied to the new Dingell agreement. (I recall your telling Perry last week that we could perhaps be more generous in marking documents as sensitive since they were going to get them all now.)

Ann said you suggested that she, I or Ramsey meet with Yamada et al. to discuss this. Frankly I think it might be wise to have a low profile over here on this issue. I don't mind calling Yamada or Brown but I don't think a "front office" visit is warranted. If you disagree, I'll

be happy to go. Let me know
what you'd prefer. How about
a call from me to Yamada or Brown
followed by a Gailbo/Ramsey
visit?

MW

3/14 Barry
Inquiry from Congress.

3/15 CED
Options 2:30
① go w/ Dingell
② cut + paste

3/15 Tringlund
She has PAS. + Stringfellow. Ready to go
~~[illegible]~~ Still working on Keefe, too
Ottati + Goss - starting today. Atty. out of
Bridgeport - in Richards safe. Ready to g
Seymour - not sure.
Debora Woitte working on Keefe

3/16 CEA, Olson 2:30
Get Perry memo to Gorsuch re: claiming privilege.

Per Mike Brown
Oral arrangement Leifer / Prolman to delay delivery until works out whether they got Dingell deal. Will deliver representative package on Thur to show are working on it.
Molinari upset that haven't delivered documents.

3/10 Yamada
Documents on 6 sites should be ready by end of week.

3/5 CC

Memo from CED + Olson → Schmults ↔ Priority

Pt. I
① Problems w | Levitas proposal to revise agreement
② Signing
- limited to request
- agreement to broad
- applies to everything (crim, etc)

Due 10:30

Pt II
Suggestion that Agency put in place logging system
① request reason for looking at them
written request
② Log - who, what, when, notes
copies, questions
precise times + dates
③ Log of all Congr. calls from staffers or members re: all cases in litigation or which may go to litigation

MW - Florio wants briefing on Bridgeport.
Is closed case. SDR said OK
Wallace questions it

La Falce - Hooker.

Meeting Hautz, Wallace, AG, SDR.

Pt III - Marty's notes

3/15 Leifer TT

Will check on Olin. Doesn't know whats going on. w/ Stafford.

Getting back MOU's from Levitas, Florio + Synar.

L. Brown wants Chem-Dyne at noon.
Leifer will get agreement to maintain confidentiality.

They don't want to have to segregate materials. Want Prolman's approach.

Batson —
Tom Montrose
Lee Thomas' office

Reich - don't care about list of attendees etc.
Worried about all offers + counteroffers.
Don't have final settlement agreement
Will probably file one w/ court unsigned next Thurs. Still issues for court to ~~[illegible]~~ decide. 1000 separate lawsuits by injured parties.
700 tort claims against U.S.
~~[illegible]~~ Would settle all of this.

Shouldn't we get waivers from other counsel.

Court actually involved in settlement. Different from Synar + Inmont ~~to~~ that extent.

David dealing w/ Montrose, Biros + Lucero
They are unwilling to do anything but get Fri extension

CED to McConnell

Memo - what we delivered to Levitas
- when
- circumstances
- who was there

Ross

① Delivered docs first time

② 2d time - asked for 4 docs (?) But only wanted to see one. That was after all Members left.

Call EPA ? what is going on w/docs. Call Mike Brown if necessary.

Who did Prolman agree w/ at EPA to take representative sample.

(

3/16 Reich

Supoena Stafford → Hernandez to testify 3/23 on Olin, Dumont & Seymour. Want settlement docs.
Reich opposed until filed. Probably next Thursday. Due to court then.

Sandals

Lester Brown & Leiffer worked out that Brown to get Waittes es files at noon today.
Barry has reviewed.
~~Would be if~~

Leifer

Planning to turn over ~~all~~ some ES docs on those six sites tomorrow.

Prolman wants to be able to ~~tell~~ say he at least got something on each site

Met yesterday w/ Prolman

Hope to give him unredacted docs. on (all six sites (at least a few) tonight. Will have him sign something similar to Dingell.

"Today we are providing ______ "

Levitas rejected offer. Said he wanted to deal w/ DOJ & White House.

382-4823 Montrose

3/16 Batson

Informal request.

Curtis

He gave her the list

Specific facts on 160 other cases.

Hearing on 3 settlements.

Bill Pendergast — 382-5200

Dep. Director - office of legislation.

Drafts & correspondence.

Lucero & Biros before Dingell today on Seymour in Exec. Session.

Subpoena - Hernandez. Subpoena directs him to be prepared to present testimony on 3 sites, Olin, Seymour & Dumont & provide specific facts on 100 others.

3/16. CED, MW, SDR, HH, L. Wallace

Wallace - traditionally don't provide briefings on pending cases. Can do on closed cases.

Bridgeport - what happened to generators.
Attempts to locate.
Why no cleanup.

3/22 Leiffer

No new requests for documents.

Haven't given them Olin documents.

Chem D, Seymour, OMC

Florio letter of 3/1.

Lowry/ - were to use for hearing today.
Was crim. referral; declined by EPA

~~Reilly Tar no docs. yet~~

Some Docs turned over in Lowry except ES. Lots more to go
15 mo 3 tier process.
Stops w/ Mike Brown.
CED did not object to this procedure in conversation w/ Leiffer, Brown Ramsey & Dinkins

Reilly Tar - have given some to Dingell.

Have ES documents on 6 sites ready to
go to Levitas as soon as work out

PAS Oswego redacted documents never
went up because weren't in Exec. Sess.
Prolman agreed ~~that~~ wasn't good idea to
continue redacting
"Everybody" talks to

EPA not in loop. Leifer drafted language
exempting criminal etc. But they are

Florio - all N.J. sites.
Trying to get them to view in situ.

To date, most files have been segregated.

Won't make decision on what to do w/non-
~~sensitive~~ files ~~that~~ have not yet
been segregated w/o talking to us.

March 1 Florio - Loony

Memo to Sehr

① She & I talked
② point out changes
③ if segregate is OK
④ typos

3/31 Letter
Florio
Will obtain access.

#2 out in copies sent to WH.

New Dingell.
Are going to Region IX to look at Globe, Ariz

Check w/SDR

June 16, 1982 Hammock → Ramsey
Seymour update.

3/29 CED, SDR, NF, MK

① Why to file civil suit
② Why not prosecute Gor.

Alan Parker – for Rodino

Collect all files + documents. Put in conference room.

Look at 64 docs.

Don't combine files

Redacted + unredacted

Initialed sets

Regnery, Walker & SDR CED Files

Notebooks
Correspondence books

McConnell + Olson met w/Parker yesterday
Focusing on what led up to filing civil suit.

Aren't everyone interested in underlying files.

Dolan will go with them everywhere.
Each Division setting up room.

{ Whoever leaves first should lock door between
CED + AH

Memo to Schmults, McConnell, Olson + McGrath
Call Dolan - please see CED after staff mtg.
Bring McConnell
Let McConnell know of Seymour.
Remind CED to talk to Schmults on this.
Get info from Hammock. Call Goodlad(?).
Start w/ Carol's files.
She wants to review her notes.
Oversight report by 2d week in April.

3/29 Hamrock

Called by Goodlove 3/28. 331-6333

886-6833 - Larry Kit Region ~~[illegible]~~ V

Not clear why investigator wants to see Goodlove.

Investigator will probably go to Region V.

3/29 SDP

Call Bob Shaefer - Reg. Counsel 353-2016
who has been interviewed.
Are they following SOP.

3/29 Charlie Goodlove 331-6355

Monday 11:45 Dick Frandzen called.

He & Raake doing some interviewing.
Will be in Chicago 4/5. Want to come
to Mpls. 4/6.

Centering on Aug → settlement events.

Didn't think would be need for searching
for documents.

Phyllis Freeman

Thought it might take 1-1½ hr.
11:00 ~~[illegible]~~ April 6.

Didn't ask to see files or documents.

No objection to giving them general info.

(

Series of meetings in Fall 83. 4 sessions.
100+ cos per session.
They were advised that were discussions
going on at same time w/ generators
committee.

~~Goodlo~~
3/29 Goodloe TF

U.S. Atty. - difficult to give guidelines
Observe general guidelines about not
discussing future strategy. Not much to say.

Barker on her way to D.C. for U.S.
Atty Advisory Committee. Probably will
be here a couple of days.
She will talk to Bill Tyson.

(

She will call Dinkins.

~~Atle~~ Larry Kyte has been contacted.
Goodloe will call to find out subject matter,
whether is same committee, whether
subpoenaed, etc. Told him I thought
it was OK as long as didn't
suggest answers or attempt to
interfere w/ investigation.

3/29 Dolan
Doesn't know what policy is now.
Who makes that decision.

5:30 - meeting

3/29

Bob Schaefer
(+ Frandsen ?)
Raabe is coming in on April 5.
2:00 pm Kyte
11:00 Pam Ricar – she checked w/ [illegible]

Schaffer – won't be in that day.
They want to talk to him too, either in DC or Chicago.

May wish to see documents.
Ricar

Dave mentioned to Leifer that in Region don't know what Hdqts. did w/ final cut on documents.

Seymour – thinks all RC docs. segregated.

Talking to attys only.
Interested in Aug – Nov 82.

Particularly Sept. 2 meeting at DOJ.

Thinks EPA Hdqts + DOJ attys have already testified about.

Haven't yet expressed interest in talking to tech. people on Seymour.

Also want to talk to attys + tech. people on Rilly Tar. Doesn't know who.

He has called Leifer about docs.
I will check w/ him.

Mary Ellen Lynch EPA public affairs
Ricar told by her they might wish
to see documents + they should
xerox if possible.

Kyte
Ricak 886 6857

Dogen Grimes 886-6851

3/29
McConnel Dolan CED MW SDR

How have they handled requests like this in
the past in U.S. Attys office.

Should go through McConnell's office.

Do we have OLC drafts..

Look at it → Talk to her

Pull all personal notes
Put back in files
Tues – Ramsey + Walker
~~List of~~ Leave other notes
Remove tabs
Put away clippings
Refer to OLA

Dolan

3/30 Follow normal procedures

Committee should refer it to OLA.

OLA will have the Committee write.

Have U.S. Atty. or AUSA call.

Committee must write McConnell.

Goodloe - 331-6333

3/30 Leiffer

Will add to P4 "or excluded by law."

March 22 - new Levitas agreement

Not w/ Florio. Will try tomorrow.

Bridgeport docs turned over to Levitas, not Flo

Orally going under Dingell

Leifler talked to Grumes - EPA 5.
Told him to mark

EPA decided to go w/ oral agree

Whatever Region decides

Region sent in box of documents.

3/30 Shaefer
Would welcome DOJ being at Region II when investigators there
Especially reviewing documents.

3/31 Tell Tom to call her if necessary.

Barker - wants to do it by usual procedure.
Agreed to let them see documents for matters behind us. Not for future strategy unless have good reason.
If they want to see ~~things~~ documents of ~~that~~ nature he should consult w/ us or Dolan.

Talk to Ramsey about this.
Treat about same as MOU.

Ask for specific written request?

Are we getting ready to amend complaint.

Talk to Adams about sending DoJ atty to Region V.

3/32 Leufer TT
OK to send DoJ to Reg. 5.

~~324-9212~~

370-5500 331-6333

X4498

Goodloe 4/1

Not hot to be interviewed. But recognizes that may be best to cooperate.

Wants representation.

Doesn't think I should.

U.S. Atty will sit in if is there.

If U.S. Atty available on Wed. can sit in rather than someone from leg. office.

If goes to Hill wants civil representative.

Many docs already public. Internal memos aren't.

Dolan 4/4

Will be no meeting until OLA gets letter.

Bob under assumption that meeting is off.

Must have letter + must go to Deputy.

President can't even look at these documents under our internal guidelines w/o going thru Deputy.

Draft OLC memos. Do we have any? If so, send back to OLC + they will take care of them.

Make sure meeting is off.

Better to err on side of giving them what they want.

4/4 Green

Asked in writing to have docs kept in confidence. Referred to ~~Exec. Sess. Rules~~. Levitas agreement.

4/4 Dolan

Come to his office at 10:00. He will bring up to CED.

No internal WH ~~doc~~ advice.

Documents - Dep. must make ~~that~~ decision.

4/4 Goodloe

By phone - he told AA to send letter to
Att Gen. not

May

4/6 Shafer

Will send Leifer + Hammock
copies of what is sent to Bill.
May send it through Leifer.
Will have cover memo re: confidentiality.

6/6

Wegman -
Talked to Prochnau.

Levitas - tomorrow - to release Burford
Senate W&D RCRA reauthorization

6

~~Leiffer
Yamada & Mays going Monday
Only Yamada knows what
happened~~

~~March 24 - Perry → Levitas
85 docs on I Seymour
(after 2d MOU).~~

9/20

Jim Fiers

Contentions

- EPA led to believe by 3 that he would send Congress.

① Did we ever turn over documents
except redacted?

② Did we ever see notes of Strickland
and Burach before 2/25.

9/83 Loeffler

Yamada + Mary ? going Monday.
Only Yamada knows what happened

March 24, [illegible] → Levitt
ES [illegible] (Ferguson
turned over.
(after 20 MOU).

March 9 - first time they had MOU
w/ Dingell

March 21 letter Perry → Dingell
Following to March 14 letter
— notes & memos on Stringfellow

March 10 - Perry + Dingell
~~[illegible]~~
+ Transmitted docs on 5 sites.
No way to tell what went up.

Yamada took it up to Dingell.

4/4

Hammock
- Has seen what have in Hdqts.
- Has talked to Kyte about categories to be held as ES.
- Hasn't looked at everything
-

Thought Larry was to send all ES to Hdqts.

Will check w/ Kyte to make sure all is OK.

4/13 Leifer

Synar is one who has signed in addition to Levitas + Dingell.

Florio redrafting.

Scheuer interested.

Doesn't think has seen anything but non-sensitive. Are only the 8 pages withheld.

Levitas got the 8 pages of witness statements in Bridgeport.

Ruckelshaus confirmation on 20th.

4/19

Synar - 2 requests - April 14 Globe
Lester Brown - talking to Burgess.
Re: American Electric
Jacksonville, Fla
Title 18 case
Forged signatures

May be Hearings 4/25 Dingell (?) on Tar Creek + Globe.

Dingell has reviewed these files

Lucero + Thomas to be called

MOU - close to agreement w/ Scheuer.

Arguing w/ Florio. They took out reasonable advance notice. Limited it re: where access will be given. They don't want to say where they want this.

Are moving on RCRA reauthorization
Are getting together legislative history drafts

Lisa Friedman will be handling RCRA
reauthorization

Richard H. Mays

Acting Dep. Enforcement Counsel

Another request on Love Canal
From 2 senators + a representative
Want study on contamination

1/29 Surell Brady 633-5302

Cong. Livingston (LA)
Writing re: Burford / DoJ
She wants to send him
Schmults 3/4 + 3/7 letters

1/29 Dolan - no recollection. Thinks DoJ did
release.
Art Brill x 2018

1/29 Nick Sheean - OPA
~~DeCair says they were made public~~
Couldn't remember if was us or EPA

9/26 SDR, MK

1. What procedures were we following for reviewing docs.
2. Which cases had been reviewed for ES docs. Here & EPA.
3. When MOU's negotiated
4. Who did MOU w/ Dingell
5. Did we give Dingell what gave Levitas
6. When Pres. press conf
7. When was Dinkins annoyed re: Seymour docs.
   - Who
   - Why concerned
8. Meeting w/ McGrath | Dolan | Schmults, SDR
   Keeney (?). Dinkins
   Olson & Perry
9. Date when Levitas negotiations started.
10. Was document turned over during negotiations.

:

1- chronology

2- list of new documents withheld   Laurel

* ~~3- Letter to Perry~~

*✓ ~~4- Memo Letter to EES staff attys~~

* ~~5- Memo re: meeting~~ re

~~6- Check w/ Kenney~~

~~7- BED to letter to McGrath re: Walden.~~

8- State bar issues.

~~Memo re: meeting to Ramsey?~~

✓ ~~9- Marty - organize files.~~

✓ ~~10- transmittal letter~~

✓ ~~11- Reply re: interviews~~

✓ ~~12- Response to Jan. 14 letter~~

~~Memo to Ramsey~~ ~~file [illegible]~~ ~~typewriter table~~ [illegible]

~~locks on doors (2)~~

~~Send Laurel copy of Carol's memo~~ [illegible]

~~circulate letter re: cc's~~ ~~(but final from Steve)~~

~~Document LNR activities.~~

* ~~Have Sonia Crow documents xeroxed before returning.~~

~~Get memo to cc's from Glenn [illegible]~~

~~Discuss w/ SDR type of records I need to keep.~~

Betty Yu - FOIA

~~Get 12/23 draft letters~~

~~Put home phones on list~~

Marty - pull cases on exec. priv.

~~Circulate Perry & CES memos to working group~~

✓ ~~Debrief ee's for lawsuit~~

[Check w/ SDR re: Coke Chemical issue
Walden thinks wasn't thoroughly ~~to~~ investigated

* « Leber wants Sonia Crow notes out ASAP.

What if issue subpoena dct.

~~Letter to Perry. Don't take documents.~~
~~Deliver in morning.~~

~~Dietrich memo: on working group meeting.~~

→ ~~Get titles of people to be interviewed.~~

→ ~~Book containing EPA letters~~

~~Book of Dingell documents~~

~~Files~~

~~Spec. PRCS Statute~~

~~Computer~~

~~Get Florio request for all Superfund material~~

~~SDR - memo to staff re: not sending~~
~~out internal DOJ memos~~

Activity summary

#21 Zugpwerdst check on this

Carol - Pres. directive

White paper on DoJ involvement

~~Has mining waste issue been resolved.~~

Dioxin documents -- must get on top of this

Interviews

Questions

1. Do they have to go to interview.
No.

2. If don't, will be subpoenad.
Must go there.

3. Take all documents not privileged?
Do they have to.
Isn't that the Agency's decision.

But we have already turned them over.
Should make sure that aren't taking
up things that haven't been subpoenad.

4. Have to answer fully + truthfully.
But, should not respond if President
has claimed privilege.

What about recent documents ~~upon~~
which EPA will withhold but
President hasn't seen.

5. Could be held in contempt - just as Gorsuch
was. May not be legal.

6. Who can counsel ee's.
Can ~~they go up~~ go to private
attorney.
Can probably have either agency
or DOJ attorney.

EE should be able to demand atty present
at either interview or hearing.

Should agency hire private counsel for
them. Is there a conflict.

Could OSC represent.
Who in DOJ.

7. Should Administrator order? ask them not to testify re: privileged documents.

~~Letters OK w/ Walker~~.

8. Should they get same representation as Gorsuch? Same attys?

9. What happens if EPA atty. refused right to be there. Will interview go on.

10. Will it be recorded. Who will get copies.

11. Will ee's be put on admin. leave.

APPENDIX 3: CHRONOLOGIES AND CALENDARS

2871

BLANK PAGE

2872

Chronology of Significant Events, September 15, 1982 to March 9, 1983
(Department Chronology)

CHRONOLOGY OF SIGNIFICANT EVENTS

Sept. 15	Levitas Subcommittee writes EPA requesting documents on all Superfund sites.
Sept. 16	EPA asks Lands Division DAAG Walker for DOJ position on Levitas request.
Sept. 17	Dingell Subcommittee letter seeking documents for three superfund sites and two Dioxin sites.
Sept.28-29	OLC representatives met with Lands Division personnel twice. OLA representatives attended the first meeting; EPA people, the second.
Sept. 29	Lands Division and EPA people met with Levitas Subcommittee staff at DOJ to advise Subcommittee staff of serious problems with Subcommittee access to active litigation files.
Sept. 30	Levitas Subcommittee authorizes issuance of subpoenas for EPA documents.
Oct. 6 or 7	EPA General Counsel Perry advised DAAG Simms that EPA saw no reason not to turn over all documents, including deliberative memoranda & notes from open enforcement files. DAAG Simms requested Perry to transmit to Justice a complete set of the sensitive documents for review.
Oct. 7	EPA General Counsel Perry letter to Subcommittee advising them of EPA's intention to withhold enforcement sensitive documents.
Oct. 8	By letter of 8th, Perry transmitted to DAAG Simms a set of documents. --The initial review of documents was done by career attorneys in Lands & OLC and subsequently by a DAAG in Lands and OLC.
Oct. 14	Dingell Subcommittee staff examine at EPA, the enforcement sensitive documents subpoenaed by Dingell. Dingell Subcommittee subpoenas issued. Letter from Regnery to Barrett.
Oct. 21	Dingell Subcommittee subpoena served.

Oct. 25	President signs instruction to Gorsuch re: Ex. Privilege claim for 10/26 - not implemented.
	McConnell letter to Chairman Dingell justifying withholding of enforcement sensitive documents.
Oct. 26	Dingell subpoena originally returnable (date changed to 12/9, then to 12/14).
Oct. 29	Lands Division attorney at EPA meeting maintains decision to withhold enforcement sensitive materials.
Late Oct.	Burford expressly stated her concurrence with judgment that executive privilege should be asserted on same documents.
Nov. 8	Chairman Dingell letter to Attorney General restating Subcommittee position.
Nov. 16	Levitas subpoena issued.
Nov. 22	Levitas subpoena served.
Nov. 24	McConnell letter to Chairman Dingell proposing procedures for handling withholding material.
Nov. 30	President instructs Gorsuch to assert privilege.
	Attorney General notifies Messrs Dingell and Levitas, of basis for President's claim of privilege.
Dec. 2	Levitas Subcommittee subpoena returnable, privilege claimed, contempt voted.
Dec. 8	AAG's Olson and McConnell meet with Levitas Subcommittee in an attempt to settle, although Justice has no specific settlement offer to make.
Dec. 9	Admin.'s last written proposal to settle.
Dec. 10	Public works & Transportation Committee votes contempt supporting Levitas Subcommittee.
Dec. 14	Dingell Subpoena returnable, privilege claimed, subcommittee contempt vote.

Dec. 16	House votes contempt. Lawsuit filed.
Dec. 17	Contempt certificate delivered to U.S. Attorney.
Dec. 30	House moves to dismiss lawsuit.
Feb. 3	Judge Smith dismisses lawsuit.
Feb. 18	Agreement reached between Administration & Levitas Subcommittee.
Mar. 9	White House releases documents to Dingell Subcommittee. EPA Administrator Burford resigns.

CHRONOLOGY-GORSUCH MATTER, SEPTEMBER 15, 1982 TO MARCH 2, 1983 (LANDS CHRONOLOGY)

CHRONOLOGY – GORSUCH MATTER

9/15		Memo from Mays to Perry and Brown re: Region II
9/16		Mays sends note to MLW asking for DOJ position on request
9/28	2:00pm	MLW, Simms, Rotenberg (OLC), Logan (OLA), Wallace, Harris (LNR) re: DOJ briefing on EPA records request -- how to respond to 9/15 and 9/17 letters
9/29	8:30am	MLW, Simms, Wallace, Harris, Perry, Brown, Mays, SDR? re: scope of Prolman request and policy issues
9/29	10:00am	MLW, SDR, Perry, Prolman at DOJ re: scope of Prolman request
10/1	10:00am	Regnery, Olson, Simms, Tarr (OLC), SDR, Spears, Cooksey (WH), Perry, Daniel at OLC re: Dingell/Levitas requests
10/1		Levitas meets with EPA
* 10/5	10:45am	CED, Olson, Simms, Pyke (or Price) re: ________________
10/6	9:45am	MLW, SDR re: Dingell letter
10/6	3:00pm	MLW, Regnery, Perry, Mays, Simms at Perry's office re: Perry meeting with Levitas on 10/1
10/6	4:00pm	MLW, Dingell's staff in Barrett's office re: ________________ MLW or Regnery? Was EPA there?
10/12	10:30am	MLW, Regnery re: Dingell (possibly MLW briefing ASR)
10/12	2:00pm	MLW, Simms, et al. re: ________________
10/14		Dingell subpoena: Tar Creek, Stringfellow, Berlin and Farro
10/14	2:00pm	Regnery, Mays, EES atty, Frandsen, Christy in Perry's office re: ________________
* 10/15	7:00am	CED, Olson, MLW, Regnery, SDR, Simms, McConnell re: Dingell request; document review process; Executive Privilege
* 10/21	6:00pm	CED, Olson, McConnell, Brown, SDR, Mays in Olson's office re: Dingell subpoena

* Meetings Carol Dinkins attended

*	10/22	10:30am	CED, Liotta, Regnery, Spears, SDR, Simms, Yamada, Brown, Mays re: documents
	10/25	10:00am	MLW, SDR, Olson re: Executive Privilege
	10/26	8:30am	MLW, SDR re: EPA briefing on Dingell matter
*	10/29	7:00am	CED, McConnell, Olson - breakfast at Sheraton Carlton re: ____________
	10/29	1:30pm	SDR, Brown, Prolman, Esposito at EPA re: document access
	10/29	4:00pm	MLW, McConnell, Olson, Simms, SDR re: Dingell
	11/1	9:30am	MLW, Regnery, SDR, Simms, Christy re: attempt to resolve dispute
	11/1	5:00pm	MLW, Olson, Hauser, Gorsuch, Brown, Yamada, Daniel at EPA re: Executive Privilege
*	11/8	2:00pm	CED, Gorsuch, Perry, Daniel, Cannon at EPA re: ____________
	11/16		Levitas subpoena: 160 sites (served 11/22)
	11/19		Dingell hearing
*	11/22	4:15pm	CED, Hauser at White House re: ____________
*	12/2	10:30am	CED, Schmults re: ____________
	12/3		Dingell hearing
	12/6	4:30pm	MLW, SDR, Olson re: legal issues and tactics
	12/9	8:00am	SDR, Pyke, Brown re: ____________
	12/9	3:00pm	MLW, SDR, Simms re: ____________
	12/10	1:30pm	MLW, McGrath, Simms re: Gorsuch lawsuit
	12/14		Gorsuch testifies before Dingell

	12/14		MLW notes on meeting re: planning session, document review process. Unable to identify mtg or participants
	12/16		Contempt Resolution
	12/16		Complaint filed
•	12/16	8:15am	CED, Schmults; McGrath, Olson, Lee, Dolan, Ken (SG) re: options - contempt citation
•	12/16	11:00am	CED, McGrath, Gorsuch re: ________________
•	12/16	12:00pm	CED, McGrath - lunch re: ________________
	12/20	3:30pm	MLW, McGrath, Yamada, Mays, Civil Div., Simms, SDR re: planning session on Gorsuch lawsuit; affidavits
•	12/22	10:30am	CED, MLW, McGrath, Lee, Olson, Willard in Lee's office re: what should Stan Harris do; §194; amended complaint; subpoenas
•	1/4	12:45pm	CED, McConnell, Olson - lunch re: ________________
•	1/4	3:30pm	CED, Schmults re: ________________
•	1/5	2:00pm	CED, Olson, MLW, Simms re: ________________
•	1/5	5:30pm	CED, McGrath, MLW re: ________________
•	1/7	12:00pm	CED, Schmults re: ________________
	1/13	4:30pm	MLW, Willard, McGrath, Simms, SDR re: Gorsuch (Levitas)
	1/14	10:00am	MLW, Perry at EPA re: ________________
	1/14	7:00pm	MLW, Perry - dinner re: ________________
•	1/18	7:30am	CED, MLW, Perry - breakfast re: ________________
•	1/18	6:15pm	CED, McConnell, McGrath, Olson re: options

•	1/19	11:30am	CED, Attorney General re: Gorsuch
•	1/20	5:00pm	CED, Perry re: ________________
•	1/24	2:45pm	CED, Attorney General, Schmults re: ________________
•	1/25	5:00pm	CED, MLW, SDR, Gailis re: organizing working group (?)
	1/2?		MLW notes on staff meeting - MLW, SDR, ___ re: 1/25 Dingell letter; 1/25 Levitas request; Lavelle Not in anyone's calendar.
	1/26 and 1/27		Telephone calls between CED, MLW and Perry re: instructions to EPA employees
	1/26	2:30pm	MLW, Simms, SDR, Gailis, Walden, Pyke re: 1/14 and 1/25 Dingell letters; employee interviews; document review
	1/26	3:00pm	MLW, Simms re: Gorsuch suit
•	1/26	after 3pm	CED, MLW, SDR, Gailis re: Stringfellow; Lavelle
	1/27	9:00am	MLW, Simms, Walden, Dolan, Pyke?, Gailis re: 1/14 and 1/25 Dingell requests; allegations; employee interviews; memo to EES attys
•	1/27	11:00am	CED, Schmults, McGrath, McConnell, Olson, Simms, MLW, SDR, Keeney, Pyke, Dolan re: Levitas and Dingell requests; Lavelle allegations; employee interviews
•	1/27	5:30pm	CED, MLW, SDR, Gailis re: document review process; draft letter to Perry on employee interviews
	1/28		Perry sends out first memo to employees
•	1/28	11:45am	CED, Perry, Leifer, Olson, Gailis at Perry's office re: response to congressional letters; coordination EPA/DOJ
•	1/31	1:30pm	CED, MLW, SDR, Gailis re: document review process; memo to EES attys; employee interviews
•	1/31	---	CED, Olson, MLW, SDR, Gailis, Simms re: employee interviews; representation by DOJ

	1/31		MLW & SDR phone Perry re: employee interviews
•	1/31	4:30pm	CED, Gorsuch, MLW, McGrath, Perry, Brown?, Daniel? at EPA re: employee interviews; allegations; Lavelle memo on Perry
•	1/31	---	CED, MLW, SDR, Gailis re: meeting with Gorsuch
•	2/1	---	CED, MLW, Gailis re: Perry letter on interviews
•	2/1	4:30pm	CED, MLW, Gailis, Simms, Dolan, Wise, Walden, Firestone, Pyke, Kaplan re: coordination meeting; pending issues (document review, allegations, employee interviews)
	2/2		Perry sends letter to Dingell re: employee interviews
•	2/2	10:00am	CED, MLW, SDR, Gailis re: document review; employee interviews
•	2/3	1:00?	CED, MLW, SDR, Gailis re: settlement with Hill
•	2/3	1:30pm	CED, Attorney General, Starr, DeGair, Assistant AG's re: Judge Smith's decision
•	2/3	3:50pm	CED, MLW, SDR, Gailis, Steenland re: report on meeting on Judge Smith's decision
	2/4		Lavelle fired
	2/4	---	MLW, Olson, McConnell, McGrath, Stan Morris re: Lavelle letter on OMC
•	2/7	3:00pm	CED, McGrath, McConnell, Olson, MLW, Wise, Walden, Pyke, Dolan, Lamberth, Lawrence, Simms, Willard, SDR, Gailis in CED's conf. room re: litigation and negotiating options
•	2/8	11:50am	CED, Attorney General re: ______________
	2/8	12:30pm	MLW, Yamada, Gailis re: options
•	2/8	2:30pm	CED, MLW, SDR, Gailis re: litigation and negotiating options; document response
•	2/8	3:30pm	CED, MLW, Attorney General, Schmults, Starr, Lee, McGrath, Olson, McConnell in AG's conf. room re: Gorsuch

•	2/8	5:15pm +later one	CED, MLW, SDR, Gailis re: litigation and negotiating options (two meetings)
•	2/9	9:45am	CED, McConnell, MLW, SDR, Gailis re: conversation with Perry; options
•	2/9	12:15pm	CED, Olson, McGrath, McConnell in McConnell's office re: Dingell letter; revised options
•	2/9	2:15pm	CED, Schmults re: ______
•	2/9	---	CED, Fielding re: ______
•	2/9	5:30pm	CED, Schmults, Assistant AG's re: ______
•	2/9	7:30pm	CED, SDR, Gailis re: Keeney referral, agenda for meeting with Att. Gen.
	2/10		Dingell subpoena: three sites in 10/14 subpoena and two dioxin sites
	2/10		Dingell subpoena: Lavelle files
	2/10		Dingell subpoena: EPA employees
•	2/10	8:00am	CED, Gailis, Pyke re: documents
•	2/10	10:00am	CED, Attorney General re: options
•	2/10	1:30pm	CED, White House re: ______
•	2/10	5:00pm	CED, Attorney General, White House re: ______
•	2/10	8:00pm	CED, SDR, Gailis re: preparing for negotiations
•	2/14	5:00pm	CED, Olson, SDR re: ______
•	2/15	1:30pm	CED, Schmults, McConnell, Olson re: response to Gorsuch letters
•	2/15	morn.	CED, SDR, Habicht, Gailis re: press conference

- 2/15 5:45pm CED, Schmults
  re: ________________

2/16 Stringfellow tapes turned over

- 2/16 3:00pm CED, Schmults, Levitas at Rayburn
  re: ________________
- 2/17 11:30am CED, Schmults, Keeney, Caruso, Olson, J. Harris, S. Norris, Jensen, DeCair?
  re: allegations; FBI briefing
- 2/18 9:30am CED, Brown?, Stan Brand, Gailis
  re: House resolution
- 2/18 10:30am CED, MLW, SDR, Gailis, Kaplan, Criminal Div., FBI
  re: Briefing session on Gorsuch matter
- 2/18 4:00pm CED, Schmults
  re: ________________
- 2/22 1:30pm CED, MLW, Gailis
  re: tape
- 2/22 2:00pm CED, Perry, Mays, MLW, Gailis
  re: implementing Levitas agreement; Prolman visit to to EPA that morning; document review
- 2/22 4:00pm CED, Simms
  re: ________________
- 2/22 4:15pm CED, AG (Att. Gen. or Gailis)
  re: ________________

2/24 Dingell subpoena: five sites in 2/10 one

- 2/25 10:00am CED, MLW, EES attys
  re: document review
- 2/25 10:30am CED, MLW, SDR, Prolman at Rayburn
  re: Executive Session -- documents turned over; future timetable discussed
- 2/25 --- CED, MLW, SDR, Perry, Yamada, Gailis
  re: documents; employee interviews; Dingell subpoena
- 2/25 4:30pm CED, Schmults
  re: ________________
- 2/28 10:00am CED, MLW, SDR, Gailis.
  re: document review; sites Prolman interested in; Rodino letter

* 2/28 2:30pm CED, Attorney General, Schmults, Jensen, J. Harris, Olson
in AG's conf. room
re: DOJ's role in EPA matter

* 2/28 5:45pm CED, MLW, SDR
re: Levitas Executive Session on 3/2

* 3/1 11:00am CED, Attorney General, Roger Moore in CED's office
re: ________________

* 3/1 --- CED, MLW, SDR, Gailis
re: documents; Executive Session; timetable

* 3/2 7:30am CED, Gailis, Mays
re: Executive Session preparations

* 3/2 10:00am CED, MLW, SDR, Gailis, Levitas Subcommittee
re: Executive Session

EVENTS LEADING TO LEVITAS AGREEMENT AND EVENTS AFTER LEVITAS AGREEMENT, FEBRUARY 1, 1983 TO MARCH 3, 1983, PREPARED BY JOHN DANIEL (DANIEL CHRONOLOGY)

EVENTS LEADING TO LEVITAS AGREEMENT

Tuesday - Feb 1 - Judge Lewis holds hearing on U.S. v. House lawsuit. DOJ does not argue points raised by Administrator such as deficiency of subpoena or Administrator's lack of authority by reason of withdrawal of CERCLA delegation resulting from President's Order.

Wed - Feb 2 - Anne visits Ed Meese to discuss Lavelle situation. Fielding ~~[illegible]~~ joins discussion. AMG states non-concurrence in DOJ oral arguments of preceding day; she notes that DOJ more interested in arguing the Constitutional issues than winning the case

Thurs - Feb 3 - Judge Lewis dismisses the lawsuit.

McGrath and Dinkins call Perry - DOJ not going to take immediate appeal; DOJ going to try new, creative approaches to compromising; AG told them to negotiate; if it doesn't get settled, then DOJ to appeal.

Perry told them they should not negotiate on the documents without first settling what House will do to remove contempt citation and resolution.

i - Feb 4 - (Rita Lavelle asked to resign).

at - Feb 5 -

un - Feb 6 -

Mon - Feb 7 - (President removes Lavelle).

Tues - Feb 8 - Dinkins called Perry and asked that Yamada come to DOJ to an "options" discussion. Perry asked to be a party to negotiating team. Dinkins advises that it will be handled by Schmults and Fielding because "this is the President's case."

Yamada went to DOJ to meet with Mary Walker, Ann Shields and others to discuss "options" that DOJ had developed. Walker there only 10 minutes, Shields conducts meeting.

Five options presented: ① turn over everything (which DOJ would not accept); ② provide summaries of the documents; ③ provide documents under Committee Executive Session rules with confidentiality agreements; ④ return to court and ask for its supervision of review; ⑤ redacting or editing the documents before showing to Congress.

Yamada told them he didn't think much of the options, for Levitas would laugh at the ones DOJ was willing to offer. Golis was to brief Dinkins and Dinkins to brief AG. Yamada pushed to leave the U.S. Attorney to decide whether to prosecute AMG, arguing that the decision should be easy, basing the conclusion upon the defects in subpoena. This would have effect of declaring issue moot. Then we could ① await new action of 98th Congress, or ② go back to Levitas and negotiate. Golis said she would present these views to Dinkins.

Wed. Feb 9 – Washington Post reported that an offer to settle was made by DOJ to Levitas. Yamada called Waller to complain that we had not been informed or involved and we had not given concurrence. Yamada stressed our continuing concern that AMG and her reputation be protected.

4/

That evening, the President held a scheduled news conference during which he was questioned about EPA. He noted that negotiations were ongoing but said in effect: If there's any suggestion of wrongdoing we will not withhold documents from Congress.

51

Thur- Feb 10 - At Dinkins request, Perry went to DOJ to see her. She went over the five options. While she let him read them, she would not provide copy. After he took notes, she asked that he destroy the notes (which he did).

Perry insisted that contempt matter be taken care of first and at a minimum Levitas should obtain a resolution of whole House saying AMG had complied with the subpoena and asking the U.S. Atty to return the referral to the House.

Friday - Feb 11 - DOJ was to go to House to negotiate but was cancelled (per newspaper accounts) because of snow.

Saturday - Feb 12 - DOJ (Fielding, Schmults and Dinkins) negotiated on Hill with Levitas, Brand and Rolman. At no time during the day or weekend was Perry or EPA advised of what was discussed.

Sunday - Feb 13 -

Monday - Feb 14 -

Tuesday - Feb 15 - McGrath called Perry to apologize for Newsweek quotes about Anne. McGrath said he would not participate in negotiations, this would be up to Olson and Dinkins. (From our knowledge Olson never participated, rather it was left to Fielding, Schmults and Dinkins).

Fielding Office
Fielding Office

In the evening Schmults and Dinkins came to EPA to see AMG, John Daniel, and Perry. They described the "redaction" procedure which would permit the Committee to have redacted (edited) copies of the documents. AMG objected because no privilege was being preserved yet there would be the appearance that something was being hidden; large agency resources would be required to follow the process;

When we question
Schmults if new
instructions would
be issued by President
he said no. When we
pointed out that the pro-
posed agreements were
inconsistent with the
President's instructions
he tacitly agreed but
we were only "trying
to make it difficult."

Perry asked twice for copies of proposals they were exchanging but this was denied. Schmults mistakenly left copies of DOJ and House proposals which we xerox. They

71

Wed - Feb 16 -

Thursday - Feb 17 - AMG and SED met with Meese and Fielding and Deaver to discuss the negotiations. AMG stated her objection to the direction negotiations were going. She stressed that we should give up all the documents now, that the political problem created by the appearance of hiding something were too great. She stated that we had seen the drafts of DOJ and House last evening and found both unacceptable. She insisted that we be able to discuss with the President. A few testy words were exchanged and Meese made clear he didn't want this argued out before the President and that Fielding as White Counsel would determine the legal issues of the privilege matter.

AMG and SED met with the President (together with Baker, Meese, (Deaver for part), Fielding, and Fuller. AMG made pitch to President that this is no longer a legal or Constitutional issue, but a political one and that his interests were not well served by the appearance that we had something to hide. She agreed with his press conference statements on the 8th that where there are allegations of appearances of wrongdoing, then no document should be withheld. He appeared to agree with AMG, but then Fielding stated that the agreement was going to be reached today and that we should await that to see if the documents should be released. The President decided that we should wait to see what agreement was reached today before doing something else.

(No agreement was reached on Thursday).

Friday – Feb 18 – In late afternoon, Steve [illegible] (off of general counsel) received call from Ann [illegible] saying that an agreement was reached and was to be signed. No details were given.

AMG received call from Baker. She tells Baker that President not getting the full picture; "he's being poorly served"; "My judgment is that these bad stories will continue for a year. The only way to stop them is to turn the documents over"; "I've got to live with the results," but "I can't live with either of the agreements they've got"; "He wants me to do a job. Under either agreement that job won't be done well. The stories will continue"; "Will you

9/

promise me that the President will be told that it will go on and on?"; "I'll do what you ask me to".

→ See insert "A"

Late Friday evening while preparing to go to the CPAC dinner. Dick Dawson called AMG to advise that an agreement had been signed and was being announced by Schmults and Ravitas. A copy of the agreement was delivered to AMG at the CPAC dinner.

Sat - Feb 19 - Army learns of the agreement through newspaper. Later in day Dickson called to advise of signing and went over points of agreement.

JED got copy of agreement from AMG.

Sunday - Feb 20 - Wedding day.

JED gave copy of agreement to Roger Allen Moore at reception.

10/

Insert "A"

During afternoon, Dickman (while at Justice building) talked to Penny to say she was leaving the negotiations to go to Tucson, but she would not tell Penny what was happening.

11/

On March 5, 1983, I questioned Perry about information he had received from Dinkins during the negotiations. He stated that on several occasions Dinkins discussed the five options, but she (or anyone else at DOJ) "never called to say what they were negotiating, what stage it was in, or to ask whether we agreed to anything." Everytime he would inquire about the details, he was told that it was "being handled by the White House - this is the President's case."

1/

Events After Levitas Agreement

Mon - Feb 21 - AMG to Times Beach, Missouri

Tues - Feb 22 - AMG to Arizona

Wed - Feb 23 - AMG in California

Thurs - Feb 24 - AMG in California

AMG and JED speak to Fuller. AMG says she wants to meet with the President. Among other things AMG tells Fuller "This whole scandal will continue until documents turned over and I don't think the President is well served." "I didn't think things would improve with the Levitas agreement". "I think we ought to turn these God Damned documents over or we're going to bring this President to his knees."

Craig responded: "Personally, my heart goes out to you. And I don't like asking you to lie. I'll join with you on the documents question."

Later that evening AMG returned to Washington.

2/

Friday - Feb 25 - AMG and JSD met with the President (and Vice President Bush, Sen. Paul Laxalt, and Fuller.
AMG again stressed that stories won't go away until we turn over the documents. Nothing is left inside of executive privilege in the Levitas agreement. The President is not being well served by continuing to withhold the documents.

The President inquired as to what Bill (Smith) said about this. AMG responded that she had never had a chance to speak to him. The President then instructed Fuller to get Anne a meeting with the AG. Laxalt reportedly told the President that Anne was right.

Later that afternoon, Fuller called to say a meeting with Smith was scheduled for that evening.

AMG and JED went to AG's office where he was joined by Schmults, Dinkins, Hauser, Fuller and another attorney. AG was unsympathetic to AMG's position and said that asserting executive privilege had nothing to do with her problem.

Later that night AMG went to Colorado.

Sat - Feb 26

Sun - Feb 27

Monday - Feb 28 - AMG and JED talked to Dick Hauser regarding instructions to be given employees subpoenaed to appear before Dingell. Hauser stated that pursuant to instructions from himself, Schmults and Dinkins none of the redacted documents given to Brooks should be given to Dingell: "let him get them from Brooks". Hauser didn't want to start a "new" procedure with Dingell. AMG said she was going to tell her people that any document given to Brooks should be given to Dingell unless instructed otherwise. Dick said he "~~[illegible]~~" feels uncomfortable".

Later Hauser called back to say he'd talk to Fielding and any document given to Brooks in redacted form could be given to Dingell. He also said: "We don't want anything going to Dingell that hasn't gone through the 'process'."

Tues - March 1 - Fuller called JED re quote in Washington Post.

Late that night it's reported that Chairman Rodino instructed his staff to begin impeachment proceeding against the AG for "obstructing a lawful Congressional investigation".

During day Dingell wrote to the President saying Lavelle perjured herself and that President should release documents.

~~Wed - March 2~~ At House Appropriations Hearings AAG [illegible] announcing EPA will not change unless all documents are produced for Congress.

~~Wed - March 2~~ - Fuller called JED to discuss White House response to Dingell letter. Fuller to meet with Fielding to discuss the letter.

Wed. March 2 - Fuller called JED to say WH would respond to Dingell letter along lines of providing [illegible] access. He thought we would be able to support it. He said they see a distinction between complete access and some access.

5/

Craig Fuller called again to say that Speakes in his press briefing that day was going to say: Congress can have complete access to documents in conjunction with oversight of EPA. Congress is not to be denied access to any document. This, of course, extends the Levitas agreement to all committees of Congress.

Fuller noted that Speakes would down play the "process".

For AMG, I stated our non-concurrence. I said that we should respond that all documents would be turned over to Congress.

Fuller said White House position is that they'll get the documents, have possession of redacted documents and can see them all. He said he couldn't see how Dingell could object.
JED responded by asking why Dingell hadn't already accepted earlier offer? Fuller wanted Anne to "stick with this" through today; they can't go any further for now.

Thurs - March 3 - AMG, JED, Perry, Yamada and Mackittle were met by Schmults and Dinkins.

Schmults advised AMG that the Department of Justice was withdrawing from the Executive Privilege matter and would not be providing counsel to her or the President on privilege. Therefore, DOJ would not represent AMG in her appearance on Hill to answer subpoenas.

Schmults said that to his knowledge AMG was not under investigation.

Schmults said that DOJ's role had changed from representing the agency to now investigating it and that it would have to wall itself off from EPA.

AMG reminded them that they had earlier told her they could represent her even while she was under criminal contempt and now they say they can't.

[illegible]

Go back to my Chronology –

Marie + Fielding agreed Anne could announce any agreement.

When Schultz + Dirksen came over Anne told them she wouldn't be allowed to announce.

When Dawson called on Friday, Anne asked him if he realized she was to announce. – he said no.

AMG to Baker (in his office)

I know you'll just think I'm a bitchy female but I think we've got to turn over these documents.

CHRONOLOGY OF EVENTS RELATIVE TO THE CLAIM OF EXECUTIVE PRIVILEGE AS TO ENFORCEMENT-SENSITIVE DOCUMENTS OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY, SEPTEMBER 14, 1982 TO MARCH 22, 1983, PREPARED BY RICHARD MAYS (MAYS CHRONOLOGY)

CHRONOLOGY OF EVENTS RELATIVE TO THE CLAIM OF EXECUTIVE PRIVILEGE
AS TO
ENFORCEMENT-SENSITIVE DOCUMENTS
OF THE
U.S. ENVIRONMENTAL PROTECTION AGENCY

(All dates are 1982, unless otherwise indicated. The name of the chairman of the Subcommittee of the U.S. House of Representatives for whose subcommittee the activities were performed is indicated opposite the date of the event.)

1982

September 14: (Levitas)

Region II office telephoned Headquarters and stated that Bob Prolman, an investigator of the Levitas Subcommittee, had called to advise that he would be in the Regional office on September 16 to inspect records relating to sites which are on the Agency's Interim Priority List of Superfund sites. The Regional Office desired to know Agency policy regarding Congressional access to those records.

September 15: The Regional Office inquiry was directed to Richard Mays, Special Assistant to the Enforcement Counsel/Deputy General Counsel. After discussion with Robert Perry and Michael Brown, Mays advised the Regional Counsel that it was and has heretofore been Agency policy to release information relative to the site, and the type and concentrations of hazardous substances found there, but to not release the names of potentially responsible parties, or notice letters which may have been forwarded to them. Mays also attempted to contact Prolman at his office in Washington, but was advised that Prolman was already in New York. Mays wrote a memo to Perry and Brown summarizing the contacts which had been made.

September 16: (Levitas)

Mr. Prolman appeared at the Regional office in New York, and was offered the opportunity to review the records relative to the site, and the type and concentration of chemicals found thereon. He refused the offer, and called Mr. Mays in Washington, who explained the Agency policy and the reasons for the policy, and invited Mr. Prolman to call when he returned to Washington the next day so that the matter could be discussed at length. It was suggested that a written request be submitted with reasonable time to enable the Agency to respond. Mr. Prolman called Mays later and advised that the Subcommittee's letter (dated September 15) had been sent. He was advised that, although we had not received it at that time, we would consider the request and Mays again invited him to contact us upon his return to Washington. After consultation with his superiors, Mays contacted Mary Walker, Deputy Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice, advised her of the receipt of the letter, and requested that the Department provide guidance regarding the Agency's obligation to release the requested material.

6/10/83 According to Robert Litan, (Burford's lawyer), Daniel says that he called Perry & told him to release the documents on or about the 16th Sept., following a call to him from Prolman complaining that we were not releasing the documents. Daniel discussed it w/ Gorsuch & she agreed that the documents should be released. They were not aware of the non-compliance with these orders.

9/17 Mr. Prolman called Mr. Mays and was advised that a discussion had been held among Agency officials regarding the request, and that in light of the previous advice the Agency had received from the Department of Justice, and the Department's interest in preserving the confidentiality of enforcement related material, we had decided to request an opinion from the Department of Justice regarding the Agency's obligation to release the requested material. Mr. Mays stated that as soon as the Agency had received an opinion, we would contact Mr. Prolman regarding access to the material. Mr. Prolman stated that he would wait to hear from the Agency.

September 20: (Dingell)

The letter to the Administrator from Chairman John Dingell dated September 17, 1982, was received. A general discussion of the request was held between OLEC officials.

BEST COPY AVAILABLE

September 21: (Dingell)

Richard Mays called Bill Barnish, Congressional Coordinator for OSWER, to advise him of the Dingell request, and that OSWER would probably have the bulk of the response. Barnish was invited to a meeting at 1:15 P.M. to discuss responsibilities, but Barnish stated that most of the people who would be involved for OSWER were out of town. Mays sent a copy of the Dingell letter to Barnish. A meeting was held at 1:15 P.M. between Mays, Steve Leifer and Dick Emory, at which responsibilities were allocated, and a deadline set for submission of OLEC material by COB 9/29/82.

September 20: (Levitas)

Mr. Perry called Mr. Prolman and requested a meeting with him to discuss the request. Since Mr. Perry was to be on travel for the balance of that week, the meeting was scheduled for September 29, at 10:00.

September 22: (Dingell)

Steve Leifer (OLEC) wrote a memo to Gene Lucero (OSWER) formally advising of Dingell request, confirming that OSWER had lead in responding, and committing OLEC to compiling its share of the response by COB 9/29/82.

September 24: (Dingell)

Steve Leifer held telephone conversation with Dick Frandsen (Dingell Staff) regarding exclusion of technical documents from the Dingell request. Winston Haythe wrote memo to Perry confirming that conversation, and adding that Frandsen wanted all records of the Regional Administrators on each site covered by the request.

September 29: (Levitas)

A meeting was held between Perry, Yamada, Mays Carol Dinkins, Steve Ramsey and other DOJ staff, to discuss the Agency position regarding these requests. This was followed by a meeting with Mr. Prolman, Sante Esposito (Committee counsel) and Marti Downie of the Levitas Subcommittee, and Mr. Perry and other Agency and Justice officials. At that time, an agreement was reached that the Agency would allow inspection of records and information reported to the Agency or which were otherwise obtained by the Agency as a part of our informationgathering process, but would withhold memoranda or other documents generated within the Agency as being outside the scope of the request. Mr. Prolman orally advised us that the Subcommittee's request was not limited solely to any specific authority contained in Section 104(e)(2)(D) of Superfund, but stated that he believed that it was possible that the Subcommittee could obtain the material which it desired from these records. Mr. Prolman suggested that the Agency forward a formal reply to the Subcommittee, which we agreed to do, and he stated that he would wait until he had an opportunity to review the Agency's response before he took any further action.

Mr. Prolman called Mr. Mays later that afternoon, and inquired as to when the Agency might provide the formal reply to the Subcommittee. He was advised that the reply could be provided within the next week. He stated that anytime within the next ten (10) days was satisfactory. An initial draft of the response to the Levitas letter was prepared.

September 30: (Levitas)

Upon hearing that the Subcommittee was about to issue a subpoena, Mr. Mays contacted Mr. Prolman to inquire as to whether it was true. Mr. Prolman advised that he didn't know anything about it; that it was not true; that he had met with the chairman of the Subcommittee the previous evening; and that the Chairman was satisfied with the agreement which had been reached during the meeting on the 29th. Notwithstanding this, other sources confirmed that a subpoena had been voted on by the Subcommittee, and a meeting was scheduled with DOJ officials for the next morning.

(Dingell)

The Agency response to the portion of the Dingell letter which was due October 1 was drafted and distributed for comment to Perry, Yamada and DOJ personnel.

October 1: (Levitas)

Robert Perry, Gerald Yamada and Richard Mays attended a meeting at DOJ with officials of the Department to discuss the Agency's position regarding enforcement-sensitive documents. Perry, Yamada and Mays then went to the Rayburn House Office Building, where they were joined by John Daniel and John Hernandez. A meeting was held with Congressman Levitas and other members of the Subcommittee and their staff to discuss the respective positions of the Subcommittee and the Agency. Assurances of careful treatment of any documents obtained by the subcommittee were given by Levitas and the staff, and Agency personnel voiced a willingness to cooperate.

(Dingell)

Final work on compiling the portion of the response to the Dingell request which was due October 1 was completed, and the cover letter from Robert Perry to Chairman Dingell was placed in final form, and that letter, with the attachments, were delivered to the Office of Congressional Liaision.

October 5: (Levitas - Dingell)

Richard Mays had several telephone conversations with DOJ attorneys, and was advised of names of additional DOJ personnel who would be working with the Agency on the issues involved in these requests.

October 7: (Levitas)

After receiving comments from DOJ, a letter of this date was forwarded by Robert Perry to Congressman Levitas outlining the agreement which had been expressed in the October 1 meeting. A copy of that letter is in Tab 2 of the briefing package.

October 8: (Levitas)

Bob Prolman called Robert Perry and requested a meeting to discuss the October 7 letter. A meeting was held later that day concerning a misinterpretation of a paragraph of the letter dealing with the confidentiality to be accorded enforcement-sensitive materials which the Subcommittee might receive from the Agency. This meeting resulted in the issuance of a letter dated October 12. (Prolman and others from the Subcommittee staff thereafter visited our Regions I and II and inspected case files involving hazardous waste sites.)

(Dingell):

The Agency received a letter of this date from Chairman Dingell to Perry objecting to the withholding of the 35 documents which were originally withheld from the Subcommittee. This letter was sent to DOJ for comment.

October 11: (Levitas)

Telephone calls were made to Regions I, II, III and IV Regional Counsels regarding procedures to be followed in cooperating with Levitas Subcommittee staff in reviewing CERCLA case files.

October 13: (Dingell)

A letter from Al Regnery, Deputy Assistant Attorney General, was forwarded to Michael Barrett, Jr. Counsel and Staff Director for the Dingell Subcommittee, forwarding some documents previously withheld, but advising of the withholding of others due to their being enforcment-sensitive.

October 13-15: (Levitas)

Staff members of the Levitas Subcommittee visited Region I and II offices, and viewed and obtained copies of certain enforcement-sensitive documents.

October 14: (Dingell):

A meeting was held at EPA attended by Al Regnery (DOJ) Richard Mays, Steve Leifer and Lori Gribbon (EPA), Richard Frandsen, Debra Jacobson, and Jim Christi (Dingell staff), at which the staffers were permitted to view the 35 withheld documents. A discussion at which a settlement of the dispute was proposed by the Subcommittee staff. Regnery stated that he would consult with DOJ and EPA officials and respond. The letters of October 14 from Dingell to the Administrator and from Barrett to Regnery were delivered.

October 18: (Dingell)

Letter from Robert A. McConnell, Asst. Attorney General, Office of Legislative Affairs, to Chairman Dingell, stating DOJ and EPA position on withheld documents.

October 21: (Dingell)

A subpoena was served on the Administrator by the Dingell Subcommittee, requesting that it be allowed to review or be furnished with documents of the same nature as those in which the Levitas Subcommittee was interested, but limited to three sites. OLEC officials contacted DOJ officials to advise of the issuance of the subpoena.

October 25: (Dingell)

A letter from Robert A. McConnell, Asst. Attorney General, was forwarded to Chairman Dingell, protesting issuance of the subpoena, and restating DOJ/EPA position on the withheld documents.

Numerous telephone discussions were held between Perry, Brown and the Administrator (who was in Denver) regarding her return to Washington for appearance at a hearing on the subpoena return date of October 26.

Robert Perry held two telephone conversations with Michael Barrett regarding postponement of the hearing set in the subpoena for October 26. A letter of this date was forwarded to Barrett confirming the conversations.

Oct. 22 : Meeting at DOJ in Ted Olson's office - M. Brown, G. [illegible] + R. Mays for EPA (R Perry out of town). C. Dinkins, T. Olson, L. Simms, Laurel Pyke, [illegible], R. Hauser (?) and other unknown DOJ + W.H. people there - Discussed subpoena from Dingell - R. Mays advised that Levitas staff was reviewing enforcement-sensitive documents in Regional Offices. T. Olson became very agitated over this revelation. Discussion held of executive privilege and whether review of some E.S. documents by Levitas staff would constitute waiver of the privilege - we agreed to determine the extent of the Levitas staff review of documents + report back to DOJ.

October 27: (Dingell)

Robert Perry forwarded a letter to Michael Barrett confirming his understanding that the subpoena was cancelled in view of the cancellation of the hearing.

October 28: (Dingell)

Michael Barrett forwarded a letter to Robert Perry disputing portions of the Perry letter of October 27.

October 28: (Levitas)

Having been advised by Bob Prolman of the Levitas staff that he wished to review Headquarters files, discussions were held concerning whether the Levitas subcommittee should be allowed to see enforcement-sensitive documents. Perry stated that he had not intended that the subcommittee staff should have seen those documents. It was determined that the Agency could not afford one subcommittee access to records from which another subcommittee was barred. Discussions were held with Gene Lucero (OSWER) regarding withholding from view of enforcement-sensitive documents, and OEC-Waste was also advised to withhold such documents.

October 29: (Levitas)

Prolman advised that he was interested in reviewing documents at Headquarters regarding hazardous waste cases. He was advised by Enforcement Counsel that while we had been happy to try to accomodate him on an informal basis, since the Agency had been subpoenaed by another Subcommittee, we would be required to withhold from his inspection documents which we considered to be "enforcement-sensitive" until DOJ had reviewed them and advised us of their position on the release of those documents to the Subcommittee. Prolman advised that he would give some thought to this position. He declined to review any of the Agency's documents, notwithstanding that appointments had been made with Agency personnel having custody of the records and they were standing by with them.

November 12: (Dingell)

Chairman Dingell forwarded a letter of this date to the Administrator requsting her appearance before the Subcommittee on December 9, at 10:00 o'clock A.M.

November 15: (Dingell)

Chairman Dingell fowarded two letter to Robert Perry, one requesting his appearance before the Subcommittee on December 3, and the other requesting information regarding OLEC-developed orders and guidance on subjects which OSWER is contracting out development of similar work.

(Levitas - Dingell)

A memorandum was forwarded by Robert Perry to all OLEC personnel regarding procedures for response to Congressional requests for information.

November 17: (Dingell)

A letter from Robert Perry to Chairman Dingell transmitting the information requested by Dingell relating to development of legal policy and documents by contractors was delivered.

November 22: (Dingell)

A letter from Robert Perry to Chairman Dingell was forwarded advising of Perry's intention to appear at the hearing on December 3.

(Levitas)

A subpoena by the Levitas Subcommittee dated November 16, was served on the Administrator on November 22. A meeting was held by Perry, Brown, Yamada, Mays and Leifer. A chronology of contacts with the Levitas Subcommittee and staff was prepared and submitted to the Administrator.

November 23: (Levitas)

OLEC magnafaxed a copy of the Levitas subpoena and prelimary instructions to the Regional Counsels. In addition, Kirk Sniff, Glenn Underberger and Janet Tungland contacted representatives in each of the Regional Counsels' offices to alert them to the situation.

November 24: (Dingell)

A letter from Michael Brown, Enforcement Counsel, to Dingell was delivered listing documents which have been withheld from the Subcommittee.

(Levitas)

Underberger, Leifer and Tungland surveyed the Regional Counsels and affected Headquarters offices to obtain data on (1) the total person-hours required to comply with the subpoena, (2) the total cost associated with complying with the subpoena, and (3) total pages subject to the subpoena. Region-by-Region and Headquarters estimates were provided by Michael Brown.

November 29: (Levitas)

Underberger, Leifer and Tungland contacted the offices of Regional Counsel with follow-up instructions on copying and shipping materials.

November 30: (Levitas-Dingell)

Attorney General Smith signed letters to Chairmen Levitas and Dingell setting forth his opinion on the legal basis for withholding enforcement-sensitive documents. The President signed a Memorandum to the Administrator directing her to not deliver the enforcement-sensitive documents to the Subcommittees.

December 2: (Levitas)

The Administrator appeared before the Levitas Subcommittee in response to its subpoena for all documents relative to the Interim Priority List sites. At the conclusion of the hearing, the Subcommittee voted to recommend to the Congress that the Administrator be held in contempt of Congress.

December 3: (Dingell)

Robert Perry appeared before the Dingell Subcommittee regarding the claim of Executive Privilege and other issues.

OLEC's Policy office researched the issue of whether the obligation to provide subpoenaed documents extends beyond the specified delivery date.

December 14: (Dingell)

The Administrator appeared before the Dingell Subcommittee in response to its subpoena for production of records relative to three hazardous waste sites. The Administrator claimed executive privilege as to certain enforcement-sensitive documents, pursuant to instructions in the President's November 30 memo. At the conclusion of the hearing, the Subcommittee voted to recommend to the full Congress that she be held in contempt of Congress.

December 16: The full House of Representatives voted (259 to 105) to cite the Administrator for contempt of Congress.

A suit was filed in U.S. District Court for the District of Columbia by DOJ on behalf of the United States (and subsequently the Administrator) against the House of Representatives and others asking that the contempt action be determined to be invalid, and any action to enforce it be enjoined.

1983

January 14: (Dingell)

A letter was issued from Chairman Dingell renewing the Subcommittee's demand for all documents relative to three hazardous waste sites and two dioxin sites.

February 3: (Levitas-Dingell)

An opinion was rendered in the suit filed on December 16, 1982, dismissing the Complaint.

1983, cont'd.

February 10: (Dingell)

A subpoena was issued by the Dingell Subcommittee to the Administrator for all documents relating to the five sites described in the Dingell's January 14 letter. The hearing date was set for March 10.

March 7: (Dingell)

Robert Perry testified before the Dingell Subcommittee.

March 9: (Levitas)

Robert Perry testified before the Levitas Subcommittee.

Anne M. Burford resigned as Administrator of EPA.

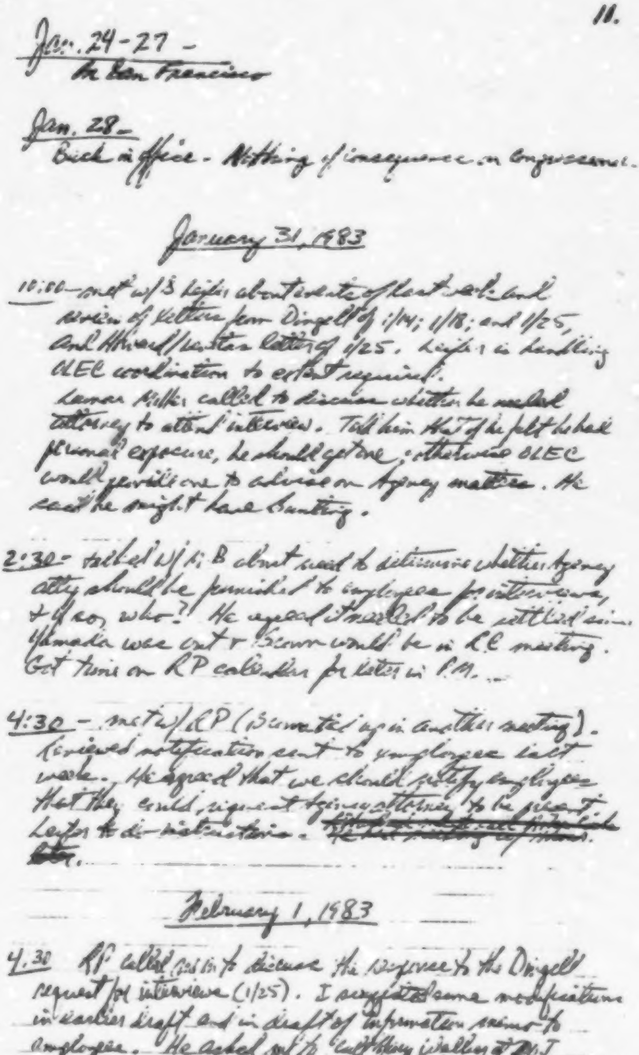
(Dingell)

An agreement was entered into between the Dingell Subcommittee, the White House and DOJ regarding production of the documents which had been subpoenaed.

March 22: (Levitas)

An agreement was entered into between the Levitas Subcommittee, the White House and DOJ regarding inspection of documents relative to Superfund sites.

EXCERPTS FROM THE HANDWRITTEN JOURNAL OF RICHARD MAYS, JANUARY 24, 1983 TO MARCH 10, 1983 (MAYS JOURNAL)



11.

Jan. 24-27 -
In San Francisco

Jan. 28 -
Back in office - Nothing of consequence on Congressional.

January 31, 1983

10:00 - met w/ B Leiper about events of last week and review of letters from Dingell of 1/14; 1/18; and 1/25, and Atwood/Lenten letter of 1/25. Leiper is handling OLEC coordination to extent required.
Lamar Miller called to discuss whether he needed attorney to attend interview. Told him that if he felt he had personal exposure, he should get one; otherwise OLEC would provide one to advise on Agency matters. He said he might have something.

2:30 - talked w/ R. B about need to determine whether Agency atty should be permitted to employees for interviews, & if so, who?! He agreed it needed to be settled since Yamada was out & Brown would be in LC meeting. Got time on RP calendar for later in P.M. ..

4:30 - met w/ RP (Burnett up in another meeting). Reviewed notification sent to employees last week. He agreed that we should notify employees that they could request Agency attorney to be present. Leiper to do instruction. ~~[illegible]~~

February 1, 1983

4:30 RP called me in to discuss the response to the Dingell request for interviews (1/25). I suggested some modifications in earlier draft and in draft of information memo to employees. He asked me to call Mary Walker at DOJ to advise of modifications in info memo. He asked me to call
Mike Cook [illegible] that OLEC should provide atty if desired.
5:00 called Mary Walker. DOJ is agreed to everything

12. Feb. 1 (Cont'd)
the employees anything in writing - wanted us to call them
in for oral ~~[illegible]~~ instructions before interview.
I told her that oral information would be misconstrued
and we felt we would be better advised to give written
information. We went through most of the memo.
She objected to parts regarding employee hiring private
atty (wording), consequences of not submitting to
the interview (too threatening), the taking of records
to interview, and last para. of draft. Made some
modifications to try to solve objections, but
largely unsuccessful. Told her I would talk
to Perry & call back. Called Cooke and told him of EO
would permit atty to accompany him to interview to advise on Agency
policy and official responsibilities. Said he would let me know of the whether one
5:30 - rode to KC reception w/ Perry & discussed
problems of DOJ with the memo. He confirmed
my opinion re sending written memo to the employees
& said to put in ~~[illegible]~~ revised draft form after the
reception for him to take to Administrator later
in evening.

7:30 - returned to office. Began revising memo
to employees on Lexitron - M. Walker called
and wanted to talk about it more - we reviewed
again - made a few minor changes - she
still did not want memo to go to employees -
Perry talked to Dinkins, but no changes resulted -
put memo in new draft and ran copy - gave to
RP after Mike Brown reviewed. Left w/ Brown
to go home @ 8:15.

February 2, 1983

8:45 RP called in - Admr. had change in letter to Dingell
re interviews & memo to employees -

9:00 - RP reviewed Admr's changes w/ S. Leifer & me. While
making changes, Admr. called RP. - wanted to make
interviews contingent on Agency atty being present, interview
being recorded & transcript furnished, & minority
staff notified & have opportunity to be present. This
was change from her position yesterday, in which the Agency

13.

(Feb. 2 cont'd) would furnish an attorney to advise as to official matters, if requested.

9:15 - Mike Cook called. Said he thought it would be a good idea to have atty go with him to provide assistance on Agency policy and enforcement-sensitive issues. Rita Lavelle had agreed. I told him that Admr. did not want employees to be interviewed unless her conditions were met, and interviews may not be held. Told him I would call back in a few minutes.

9:20 - talked to Perry about Cook call - he said go with Cook to interview and advise committee staff of conditions - not to let Cook be interviewed unless conditions were agreeable -

9:30 - called Cook and told him I was on way to meet him and go to Hill w/ him - L. Gribbon was also there and told her what status was - met Lori in Cook's office she called Frandsen & told him we wanted a reporter -

10:00 - arrived at Subcommittee office w/ Cook, and ~~[illegible]~~ and Gribbon. Discussed 3 conditions with Frandsen and other staffer (?). Called LP to clarify point on presence of Agency Atty at interviews notwithstanding request by employees - He and Yamada said they thought that was correct, and to stick on that for time being, although other points may be negotiable (LP had talked w/ Garrett about minority members & staff being present). I confirmed the point w/ Frandsen. They were not agreeable to conducting the interviews under those conditions, and asked if we were going to reply in writing. I said a letter was being prepared, and we hoped to have it up to them by end of the day. They said they would wait to do anything further until we delivered the letter. We left.

11:00 - returned to office & advised Leader, Yamada & Perry (separately) of what happened. LP said Admr. was at White House to discuss the matter, and would give us her final position when she returned. L. Gribbon said she would cancel the interviews for the day.

14. Feb. 2, 1983 (cont'd)

1:20 Lamar Miller called from Subcommittee office - said he understood interview was off - I told him of status. Talked to Bunting, who will call RP for confirmation.

1:40 - talked to Ann Gaulus c̄ DOJ (she had called) to advise of the results of the meeting w/ the Subc. staff. Told her I thought we should not insist on Agency lawyer being present if employee did not want one there - she thought we ought to "debrief" employees after interview if Agency attorney was not there - I said I thought that would intimidate the ~~all~~ employees, and asked her to determine whether that might ~~cite~~ violate some statute before suggesting it again.

2PM L. Gibbon called to advise that the Senate (Hawkins) Sub-c. on O & I of the Committee on Labor & Human Resources would like to interview an Agency employee(s) to obtain our views on whether organized crime is involved in the environmental field. Suggested she call Bowen.

3:15 - RP returned from meet w/ Admr. She had ~~a change~~ in letter to Dingell (struck sentence stating that EPA did not have [to her knowledge] any info which may establish misconduct or unethical behavior on part of Agency officials (?) - other than that, it was OK. - I questioned wording on condition regarding atty for Agency - R.P. stated that it was her intent to require an Agency attorney there at all times during interviews, so I changed wording to make that clear. Apparently, RP had tried to talk her out of it, or at least pointed out the consequences to her, but to no avail. He said to put in final form so it could be sent to Hill, and memo sent to ~~employees~~ (Admr. had no problem w/ ~~memo~~). I gave both the letter & memo to Lafer & asked him to put in

Feb. 2, 1983 (Cont'd)

final form for signature.

4:30 – Leifer advised that RP had asked Yamada to review the letter and memo. I talked to Yamada about them. He had doubts about the wording of the three conditions, but dropped them when I advised him that the Admr. had proposed them. Leifer and I then went over the letter & memo with Perry and discussed Yamada's (and our) concerns about the conditions. Nobody likes them as stated, but RP said to go ahead and put in final for signature. I asked if he wanted a memo to the Admr. objecting to them, but he said no.

5:30 – Leifer asked if I wanted to sign yellow on letter and memo – I declined. Perry signed them (plus 2 other letters to Dingell – one responding to Dingell letter of 1/14/83 & other transmitting additional documents pursuant to 9/17/82 request).

6:00 Leifer gave me copies of letters.

February 3, 1983

9:30 – Leonard Miller called to report what had transpired when he and Bunting appeared for her interview (the Comm. staff told him it was off because of the conditions, and that the employees would probably be subpoenaed).

1:45 – Received copy of opinion in U.S. v. House of Representatives. Court dismissed the complaint. D.L.P. is preparing memo to John Daniel, which I reviewed.

2:00 – Bob Wyatt called from Reg. 9, asking for clarification of memo to employees. The part about the mandatory presence of the atty did not bother him. He was concerned about whether the employee could or could not refuse to attend (ambiguity between 2nd & 4th paragraphs). I told him the employee could refuse to be interviewed, but if he was interviewed the 3 conditions must apply. Added that the subcommittee was apparently unwilling to conduct the interviews under these conditions and they would probably subpoena the employees. He asked if the Agency would furnish a lawyer to attend a hearing with the employees, and I said I thought someone

16. Feb. 3, 1983 (cont'd)

from OEC or DOJ would probably be made available, but that probably depended somewhat on the rules of the hearing. He asked if the Agency would pay for the private lawyer. I said I didn't think so.

2:25 - Bill Pendergrass called from Legislation. Wants copies of the letters sent up to Dingell Committee yesterday for minority members. He came up and I gave him copies.

2:30 - Commenced review of documents on OEC-Waste attorney resources for response to Dingell letter of 1/18 for enforcement-sensitive material. Found 2 possibles. Drafted memo to Yamada about those 2, and recommended that they not be withheld.

3:15 - M.B. asked me to find out about OEC-W role in delay of concurrence on adm. order on [illegible] Facility site. He has called for Stickl, who is to call back. Rita L. is telling RP that we are sitting on concurrence memo. Talked to F. Stickl at about 3:45. He said he would look into it

4:15 - F.S. called back. OWPE did not notify OEC-W that it had order - we found out from Region, and the order is deficient. Wrote memo to M.B. about it & OEC-W is also doing a memo of non-approval for Perry to send to Rita.

5:15 - Leifer advised that OWPE said some enf. sensitive documents had been delivered to Hill yesterday by mistake w/ non-enf. sensitive documents. OWPE is reviewing their copies to make list of documents. I suggested we try to get them back.

5:45 - Yamada said he had received call from Rita L. - wanted to meet w/ John Daniel about release of the e.s. documents. I filled him in on details as given to me by Leifer, who had gone to OWPE.

6:00 - Leifer returned from OWPE. Only 2 documents which may have been ES were included (Lowry) in site Tracking list +

Feb. 3, 1983 (cont'd)

memo from program office to F. Bowen listing potentially conf. parties in a case). ~~in writing to~~ Lucero told S.L. that he would try to get them back. Lester + I went up to Daniel's office to inform Yamada.

8:00 - called M.B. over at home + advised him of release of the potentially E.S. documents, as well as what I had found out on [illegible] 7003 order.

February 4, 1983

8:30 - commenced work to finish memo to Yamada on E.S. material in OEC-W attorney resource material.

9:00 - John Moore of Legal Times called to ask if I had been present when R.P. told aid to record dissents on employees in a "green book". I told him no comment.

9:30 - told M.B. about Moore's call, and discussed Agency position in regard to the employee interviews. He agreed that he didn't like it, but thought there was nothing we could do about it.

10:30 - finished memo to Yamada and delivered it to him, and discussed it with him. He thought we ought to inform DOJ that computer printouts were included in info which might be given to Dingell. He also asked me to review a shopping cart full of other documents on the same subject. I advised him of Moore phone call. Briefly discussed possibility of settlement of [illegible] suit.

11:30 - R.P. called M.B. about accidental release of possibly E.S. documents.

11:45 - Jim Kohanek called to advise that the Gen. Counsel of HHS (Darrell Grinstead) had called about receiving a letter from Dingell requesting documents on dioxin sites in Mo. + PCB site in Ark., particularly correspondence from Lavelle. He wanted to know if there was any guidance on what he should do. I referred him to President's memo to all Agency + Dept. heads of Nov. 4, '82. HHS is sending over a copy of the letter, + I told Kohanek we would probably want to review their material for ES documents. He will call Grinstead back to give him this info.

12:00 - told Yamada about call. He agreed that procedure outlined was proper.

18. February 4, 1983 (Cont'd)

3:00 Yamada said that we need to review remainder of atty resource documents asap, review w/ RP, and get to Kingham asap.

5:00 - formal announcement made of Pete Randle's resignation - Bynum will be acting AA for OS:FR, and I will ~~[illegible]~~ be acting director of policy office

February 7

10:00 - meeting with OLEP staff for discussion of changes in management

11:00 - discussion with Leifer and Underberg about role of OLEP + current projects.

1:00± - D.Y. asked for copies of offers of settlement between EPA and the Congressional committees. I pulled McConnell's letter to Levitas of mid-Dec. + wrote note to D.Y. about my understanding of an oral offer made subsequent to the letter by the Dingell Committee regarding an "eyes-only" review.

2:30 - D.Y. asked whether we had any knowledge of court rules or procedures about court appointment of a substitute prosecutor where the regulars are/does not take action. Told him I would check it out + talk with Alan Eckert.

4:00 - talked w/ A. Eckert and Pete Gleason about appointment of prosecutor. Gleason brought in RCP + statute on special pros. - I did note to D.Y. - Eckert said he would research case law-unit.

4:30 - M. B. said I had been "loaned" to him for a few days to help organize his new office.

February 8, 1983 19.

Met w/ staff in OSWER regarding organizational matters.

1:00 - meeting in 11th Floor conf. room w/ Administrator and OSWER senior staff - she discussed Rita L's leaving, and confirmed the version that was in today's Post i.e., the White House fired her on Monday, because she fired her on Friday. Also discussed the conditions for employee interviews w/ Dingell Subc., and stated that she expected subpoenas would be issued to the employees. Said she wanted employees to tell the truth, & if they have any evidence of misconduct, to be sure to report it to Mr. Brown or ~~[illegible]~~ other proper official.

1:45 - ~~[illegible]~~ talked briefly w/ R.P. about the article in ~~[illegible]~~ Times regarding possible perjury charges. Seems to be taking it well.

2:00 - met w/ Booz-Allen people on file system study
3:20

3:30 J.Y. asked about status of review of OSWER attorney source documents to submit to Dingell Subc.. Told him they had been reviewed, but I needed to go over a few of the questionable documents with him to make sure they were not conf. sensitive. Will schedule meeting for tomorrow.

3:45 - L. [illegible] called about Florio letter of 1/2 asking for info on dioxin sites & studies. She wanted to know who was working on it, & I said I thought OSWER had lead. She said she would check into it & let me know.

4:00 - ~~returned to OSWER for meeting~~ received call from Dale Russakoff, Wash. Post - wanted to know about my instructions from RP/[illegible] on conditions to Dingell interviews. I told her that "the Administrator's instructions were" the 3 conditions - she asked if those came from the White House - I said I wouldn't care to speculate on that.

4:15 - returned to OSWER -

20.

February 9, 1983

7:45 - met w/ M.B. to discuss office procedures -

8:45 - Kathy Greenwood told me that she was unable to locate Rita Lavelle's calendar for CY '82, which is being requested by Congress. She said that she had made a copy of it to enable the original to be given to the Subcommittee (Scheuer), and had given both the original and a copy to Cliff Wood. She said she had not seen them since. I was told by another person in OSWER that there were some papers removed from the immediate office on Friday. We searched the desk & credenza, but they were empty except for some supplies.

9:45 - advised C. Brown of absence of calendar, and suggested that we report its absence asap. He agreed, & we determined to discuss details in later. IG people came in and told Brown they were going to inventory safe in Rita's office and other ~~documents~~ — Brown thought they had already been removed.

10:30 - asked Bill Garnick if he had any knowledge of the whereabouts of the calendar - said he had only seen it on the desk of Kathy Greenwood. I asked him about the statement in Cong. Scheuer's letter about erasures, and he said that referred to the normal erasures made in changing appointments, meetings, etc.

11:45 - call from D. Yamada's sec. - said there was an emergency and I should come back to my office immediately.

12:30 - D.Y. said we needed to put together copies of all current congressional requests and responses as a Top Priority item. I asked if that included the Dingell 9/17 requests and subsequent corresp., & he said yes. I got S. Leifer started on it.

4:30 Advised by D.Y. that he needed the congressional material by 5 P.M. ~~[illegible]~~ I started helping Leifer with it. Found out it had to go to White House (Hauser)

6:15 - finished work on notebook of congressional material.

6:30 - talked w/ D.Y. about reason for delay in putting out notebook. Also confirmed approval to send computer printout of cases under development to Dingell w/ Kinghorn reply.

February 10, 1983, Cont'd 23.

any of the documents covered, but she had gone. Her desk was empty. M.B. told Kathy Greenwood to collect all documents covered by the subpoena she could find and make copies - originals to be delivered to me to put in safe in OLEC & copy to be put in safe in OSWER

5:30 - some documents (1981 appointment book, etc) received from OSWER & locked up.

9:15 - G.Y. called at home - wanted to know if we had any record of transmittal of the Levitas subpoena to OSWER after it had been received. I understood him to say transmittal to the Regions. Told him there were memos, & would get copies for him tomorrow.

February 11, 1983

7:30 - snowing hard - met M.B. on entering office and told him about article in Post about shredding and Lucero memo on Globe, Ariz. site. He said Lucero had mentioned it to him yesterday, apparently in anticipation of the story being run today.

7:45 - began gathering memos to Regions about Levitas subpoena pursuant to [illegible] request.

8:30 - F. Biros called, said that Brown had asked him to gather any info they had on notification to Regions re Levitas request. Said all he could find were Adm's & Perry's memos.

9:00 - read Carol Dinkins' letter to Perry & memo to DOJ attys dated 2/3/83, stating that DOJ attorneys would review all documents which EPA would give to Congress as well as all those withheld. Memo states that fear is EPA may decide to let some things go which DOJ would want withheld. I had heard that DOJ wanted to do this, but thought it had been dropped.

11:00 G.Y. called - he is snowbound. Told him I had memos on Regional notification of Levitas subpoena collected. He said he wanted notification of [redacted] OSWER. Told him I knew they were notified, but didn't know if it was in writing. Leifer may have a memo

24.

February 11, 1983, (cont'd)

Yamada also asked me to find out when shredders had been installed in OSW/EG. Told him I was disturbed about the Dinkins letter & memo, & related to him if RP had been drawing up response to it. He didn't know

11:20 – R.P. came in. Discussed newspaper reports with him. Don Nantkes came in and briefly discussed attorney-client privilege as it relates to subpoenaed testimony of agency attorneys. Apparently there is no privilege in these circumstances, although he said it wasn't clear. Didn't have time to discuss Dinkins letter & memo.

Noon – left to go home due to heavy snow. Ran into OWPE engineer at Metro station. He said the shredders had been installed approx. 3 weeks ago – one was in OWPE office. Apparently someone had called OWPE and said they have some spare shredders. He said Doug Henderson would know about how they were obtained. He said Kozlowski had told him he had shredded drafts of various documents, and that when he had come in one Monday, there were bags of shredded paper in the office. He also said that there was a project underway now to erase a lot of information and documents on the Lexitron discs. I asked him who had ordered that, and he didn't know. Said the division secretaries were running indexes of the discs and each person in the office was reviewing them to determine what was no longer needed. This may be innocent, but is very bad timing.

2:30 – arrived home & called M.B. – he said the shredders were installed between Jan. 4 & 6, '83, and that all enf. sensitive documents had been delivered to E. Kurent's office before then. (What if they (OWPE) withheld documents from the e. f. documents delivered to Kurent?). I told M.B. about the erasure of material on the Lexitron discs. He said he would stop it immediately. I then called Yamada & reported this info. to him. I also told him I was disturbed about the Dinkins letter + memo, and thought he ought to talk to RP about it, since Dingell was making a point of Perry's

February 17, 1983 (Cont'd.)

10:35 - Lamar Miller called to advise he had been served w/ a subpoena from Dingell. He will bring up a copy. I informed R.P.

10:40 - copy of Transcript of 1st day of Howard hearing (Feb. 15) brought over by B. Wayland - had ~~[illegible]~~ had copies made.

10:45 - Lamar Miller appeared w/ subpoena. We discussed the terms of the subpoena, + he volunteered info. regarding what he knew about it and what the Subc. might ask. I wrote memo to RP + GY about this + attached copy of subpoena.

11:05 - G. Bryan called - wants the E.S. files stored in his office suite removed because they use the room for other files. I suggested the Lexitron room in our suite, + we agreed to talk to GY about it.

11:45 - Dale Russakoff (Wash Post) called - wanted to know what was in the materials we sent to Dingell yesterday. I told her I had only generally reviewed it, and it was mostly telephone logs, agendas, itineraries(?) 1983 appointment book, etc. - no details - She asked about the exemption for documents which contained potential evidence of wrongdoing - I told her I understood that had always been the policy, based on the A.G.'s letter of Nov. 30.

12:00 - received draft brief in U.S. v. Hodges et al (Citgo) - reviewed + commented in margin - brief must be filed tomorrow.

1:15 - talked w/ RP + GY about brief - they waived review.

1:45 - met w/ GY, Stiehl, Sniff, DeHihns, Abramson, Leifer, Perron + Bryan to discuss strategy on responding to Congressionals + subpoenas, + to receive assignments. Will not comply w/ Dinkins letter of 2/3/83.

2:45 - called by Catherine Sands (minority counsel - Synar Comm.) - discussed agreement w/ Holloman on postponement of —

February 17, 1983 (cont'd)

response to 2/22, which she had heard of. Told her one of the requests was overly vague & broad, & may need to talk to the Subc. Staff about narrowing it—she asked to be included in any meetings about it. I agreed.

3:30 - talked to Leifer & Wayland about coordination of Congressionals—will get together early tomorrow A.M. Stanley Abramson called about Florio dioxin request—warned that the info was scattered throughout the Agency & agreed to coordinate that part (the first portion of the request) for me. Pat Roberts of her office called a few minutes later & we agreed to meet at 1:30 tomorrow on the request.

3:45 talked to R.P. & G.Y. about release of Gore-requested documents—advised them that a team of our people had reviewed them, although I had not personally looked at them, & only 1 document (dated 1978 on Velsicol dump) was, ~~[illegible]~~ in their opinion, even remotely enf. sensitive—I did not think it was. They said to release them.

5:00 - began discussion with G.Y. about list of Enf. Counsel duties—interrupted by G.Y.'s meeting w/ R.P.

5:40 - Left for home - Paul's birthday -

February 18, 1983

8:15 - meeting w/ Leifer and Wayland regarding Congressional requests. We divided responsibilities between OSWER & OLEC and OLEC and among us individually. Meeting lasted until approx 10:15, w/ interruptions

9:30 - M. Brown called about Dr. Art Pallotta - he is supposed to be in his office today to review his records and to separate those which are responsive to the Florio request. Brown would like a longer—

February 18, 1983 (cont'd)

who is familiar with dioxin to go to Pallotta's office to observe him while he is sorting through his files. I called for Dorothy Patton - she was not there, so I left word for her to call immediately. She called back approx 9:5 agreed to go to Pallotta's office until someone else could take her place

10:00 - talked to Jim Kohanek & obtained telephone # & name of HHS attorney with whom he had talked about the Dingell request to HHS for dioxin documents - Got name & # (   ) & called him. HHS still has documents & have not released any. I told him we would want to review the documents, & would send an attorney to HHS to review them. He agreed.

10:15 - meeting with Dave Allen, Kermit Kadar and Kirk Sniff about additional settling generators (   ) in Wade case - got briefing on circumstance of how settlement was arrived at - Looks OK. Will talk to Yamada a.s.a.p. so he will be familiar w/ it.

10:30 - Lee came to office about replacing Patton. I gave him instructions.

1:30 - meeting w/ Mike Weiner and   Lee about Lee's replacement of D. Patton @ Pallotta's office - he had been over there, but found that Syntex is a def. in the case - his mother works for Syntex - Pallotta had not been there yet & will not be until 2 PM. We agreed that he should be replaced, & I called Leifer & Stiehl about getting some of their staff over there to review Pallotta's files. They agreed to send people to P's office.

2:30 - Jack Webber (OL) came to office - we worked together on trying to resolve ambiguities and over-broad questions of Congressionals, & to find out who had done & was doing what on them. This required several hours, but it appears that the scope of the Congressionals has been narrowed considerably, & that things are under control, especially as to the Florio requests

4:30 - went to Kurent party - while there, HHS attorney called - needs to have documents reviewed by Tues A.M. - got Kohanek on phone, & he made arrangements to

84

February 18, 1983 (cont'd)

look at the documents early Tuesday A.M. Probably most hectic day of my life.

February 19, 1983

12:00 Noon – R. Perry called – wanted to know where Stringfellow E.S. documents were – I told him that aside from any that may be under process of review at HQ or DOJ, those that had already been determined to be ES & withheld from Dingell were in the safe in my office – He said that he would like to review them with the view of releasing all of them to Congress. I offered to come to office, but he said not to do so – I told him I would be there Monday & he said Yamada would be there then & we could get together then.

February 20, 1983

9:15 – D. Yamada called – he had talked to R.P. about the Stringfellow documents, & wanted to know if I could come to office @ 10:30 – I told him I could be there at 11:30 after church, & we agreed to meet then.

12:00 Noon – arrived @ office – opened safe & removed books of E.S. documents. R.P., G.Y. & I reviewed the Stringfellow documents until approx 4:00. I made copies (3) and R.P. said he was going to take a copy to Fred Fielding's house and review them with him – he wants the documents released in toto to Dingell – some of the documents contain vague references to political [redacted] and implication is that politics ~~anyway~~ entered into timing of events, although that is not clear. R. Perry had apparently not read the documents before (Lester & Brown are only ones to review besides staff). R.P. is concerned about his criminal liability & I told him I didn't see any, ~~partic~~ particularly if he had no knowledge of the contents of the documents. R.P. will take copy to Fielding this evening and insist on their release. I encouraged him that that was right thing to do – need to get all of the questionable documents out in the open.

February 21, 1983
(George Washington's Birthday)

10:30 - went to office - commenced drafting of response to Synar letters.

11:15 - talked to R.P. - he said his meeting w/ Fielding was inconclusive -

11:30 - met w/ S. Leifer + B. Wayland to discuss status of Congressionals -

2:00 - resumed working on response to Synar letters and letter of Carol Dinkins to R. Perry dated 2/3/83. Gave drafts to G.Y. + R.P.

4:30 - began review of OGC - OEG files in process w/ G.Y. - got his comments on Dinkins ~~Dingell~~ letter.
5:30 - left w/ M. Brown to ride home -

February 22, 1983

7:30 - revised ~~Dinkins~~ letter + placed in final draft for signature.
8:30 - talked w/ R.P. - he is concerned that the instruction dated 2/18 from the Administrator to the employees subpoenaed by Dingell would feel constrained to not testify about political matters - wanted to talk to Lee DeHihns about what he told the employees at the briefing last week -

9:00 - I got Lee DeHihns and met w/ he + R.P. . DeHihns said that employees were confused about what they could + could not testify to, and how they were supposed to avoid testifying about enforcement sensitive documents when they didn't know what was in the documents. R.P. asked me to draft a memo to the employees clarifying what they should avoid and not avoid in testifying regarding enf. sensitive documents. He wants to specify that they should not avoid discussing political matters contained in the documents, even though he is concerned that he will get in trouble over it. I told him I thought he was doing the right thing.

February 22, 1983 (Cont'd)

9:20 - commenced drafting memo to employees - finished 1st draft & gave to DeVillars, Perry & Leifer -

10:10 - G.Y. came in - I incorporated his & other comments on memo to employees & put in final form.

10:30 - met w/ Yamada, Sniff, Stahl, Leifer, Nukelberger & Gorman about personnel changes & planning for preparation for Dingell hearing on 3/10.

11:30 - met w/ Perry, Daniel, Bob Perlman & another man from the Levitas Subc. to discuss procedures for implementing the settlement with the Subc. - they want to go inventory on 6 sites - Bridgeport, Seymour, Ottati & Goss, Springfield

called Gene Lucero about Perlman beginning his review of documents on Seymour site in OWPE.

Press Office called - all networks there & want to take pictures -

12:15 - took Perlman & press people to Lucero's office

12:30 - Staff meeting w/ Enforcement Associates.

1:30 - talked to R. Perry about preparation of memo regarding implementation of Levitas Agreement - urged that we maintain control over our documents, & reserve right to make final determination of E.S. documents. He agreed that we needed to take matters into our control. Asked me to go to a meeting with him at DOJ.

2:00 - to DOJ w/ R.P. for meeting w/ Dinkins, Walker & Bailey - joined by G. Yamada later. Discussed current status of Dingell & Levitas subpoenas and plans for response to Dingell. I advised them that we intended to make the first & final determination of the enforcement sensitivity of our documents, but would be happy to have their recommendations on the subject. Dinkins agreed. Yamada outlined his plan for "peer review panel". They thought it was a good idea. DOJ approved release of 4 letters from Adm. to Asst. A.G. Schmults about possible wrongdoing of Rita Lavelle.

BEST COPY AVAILABLE

48.

March 3, 1983 (cont'd)

DOJ representation of Burford before Dingell Comm. on 3/10. G.Y. thinks DOJ is going to withdraw their representation – G.Y. & R.P. to have a pre-meeting w/ Burford –

Newspapers today had White House comments about her possible successor. General feeling is that Burford's days are numbered in the single digits.

It is becoming increasingly difficult to keep up with everything – nothing going on on 10th floor except [illegible].

March 4, 1983

9:00 AM – R. Thompson called from S.F. to give chronology of contacts w/ R.P. on Stringfellow

7:30 – Newspapers full of rumors of Burford about to be fired – N.Y. Times carried article about DOJ withdrawing representation from Burford. I typed chronology of Thompson's contacts w/ R.P. on Stringfellow which he (RT) had given me the previous evening.

9:30 – talked to G.Y. about ceasing redaction of documents in view of DOJ's "walking themselves off" from the [illegible] – no point in redaction while DOJ & White House will not concur in withholding the documents – G.Y. agreed that we should not waste any more time redacting – I had told R.P. at 9:00 that I was going to cease redaction process – he also agreed that it was a waste of time, and is trying to contact the W.H. to tell them that we will probably deliver all documents to Congress – G.Y. thinks we should deliver all documents unredacted to Dingell & other committees except for those covered by the Levitas agreement & give those to Dingell et al in same form that Levitas has them. I agree –

10:00 – G.Y. asked for some information (dates of Nat. Enf. Conference in San Francisco; 2) [illegible] of M. Murphy press, letters to & from Dingell re attorney interviews, inc. drafts, etc.) – also said he thought we ought to go ahead & prepare an opening statement for R.P. – this is change from yesterday's direction – I told Tangeland, Gorman et al to resume work on statement.

March 7, 1983 (Monday)

7:30 – finished compiling document books for
11:30 hearing – talked to Mike Brown (1st day back after a month's absence) about current status of matters at office – gave him regular enforcement files in process, since I would not be able to look at them for a few days. R.P. is pretty nervous, but holding up OK.

12:15 – left for Rayburn HOB w/ R.P., G.Y. & Tom Adams –

1:00 –– Perry hearing before Dingell Subcommittee –
6:00 Perry did much better than I expected – not a "blood-bath", although some tough questions on the "Green Books" and his failure to recuse in Chem-Dyne, about which RP was forthright.

6:00 – – Post-mortem on hearing – DOJ (Schmults')
7:30 letter "clarifying" its position on representation of Burford received. J. Daniel met w/ R.P., G.Y., M.B., Adams, K. Pearson & me to discuss strategy and preparations for Burford hearing on Thursday – he wants DOJ approval on w/held documents, as well as their concurrence on releasing documents previously withheld. I will draft letters & organize processing of documents. We also received 2 more congressional requests, both from Synar.

March 9, 1983 (Wednesday)

8:00-11:00 - worked on briefing books in preparation for RP's hearing before ~~Dingell~~ Levitas Subc.

11:00-1:00 - met w/ R.P. and Tom Adams to discuss documents and issues which might be brought up at hearing.

1:20 - left for RHOB. R.P. pretty nervous.

2:00 - hearing before Levitas Subc began. R.P. did very well, relatively.

5:45 - announcement made during hearing of Anne Burford's resignation.

6:30 - hearing ended - return to office - heard that W.H. & Dingell had worked out a deal on providing documents to that Subc.

7:00-9:30 - post-mortem of hearing and discussion of future administration of Agency. - talked w/ C. Dinkins about documents - she was very short. RP says she is distracted over the Ex. Privilege issue. Received copy of Dingell agreement.

March 10, 1983 (Thursday)

7:30 - went to DOJ (Dinkins office) to pick up enforcement sensitive documents in the Dingell case which had been delivered earlier - they have to be delivered to Dingell by 10 AM today. Had to wait until 7:45 when Dinkins called in & I talked to her - she authorized her sec. to release the documents to me -

8:30 - arrived at office - interviewed outside building by crew of newsmen - made CBS news.

9:00-9:45 - helped Keifer, Tungland et al get documents prepared for delivery to Dingell.

11:00 - met w/ attorneys in OEC - wanted to thank them for their efforts and give them pep talk - they had questions about Burford's order not to settle haz. waste cases for 106 administrative orders - I told them we would try to get some guidance on this

LETTER FROM PAUL MCGRATH TO JAMES SCHWEITZER, DECEMBER 28, 1984 (MCGRATH CALENDAR)

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 28, 1984

James J. Schweitzer, Esq.
Counsel, Committee on the
Judiciary
U.S. House of Representatives
Room 365
House Annex Building 2
Washington, D.C. 20515

Dear Mr. Schweitzer:

As you requested yesterday, I have examined my calendars for the period December 1, 1982 through February 15, 1983. The following is a list of those notations on the calendars that may relate to the EPA document matter that is the subject of your investigation:

Date	Time	Notation
12/08/82	3:00 pm	Betsy Grey
12/09/82	2:30 pm	Betsy Grey
12/14/82	9:45 am	Betsy Grey
12/15/82	2:30 pm	Olson, Simons, Grey
12/16/82	8:15 am	Schmults
12/16/82	11:00 am	Ann Gorsuch
12/17/82	11:30 am	Gorsuch-Wise, Grey, Wright
12/17/82	2:00 pm	Wise, Grey
12/20/82	3:30 pm	Gorsuch
12/21/82	5:00 pm	Robert Perry
12/22/82	8:00 am	Dinkins
12/22/82	9:00 am	Wise
12/22/82	10:30 am	EPA
12/22/82	2:30 pm	Schmults, Olson
12/23/82	4:00 pm	Schmults-Gorsuch
12/27/82	10:45 am	RKW, Wise, Grey, Wolfe
12/27/82	3:00 pm	Gorsuch
12/28/82	9:30 am	Fielding, Roberts, Willard-OEOB
12/28/82	5:00 pm	Schmults, Willard
12/29/82	2:15 pm	Conference Call "Gorsuch"

Date	Time	Notation
01/05/83	3:00 pm	AG, DAG, Olson, Willard re: Gorsuch
01/05/83	4:30 pm	RKW, Wise, Gray-Gorsuch
01/05/83	5:30 pm	Dinkins, RKW-Gorsuch
01/06/83	12:00 pm	Gorsuch
01/18/83	6:15 pm	McConnell, Olson, Dinkins
01/19/83	11:30 am	AG-Gorsuch
01/21/83	10:00 am	GW re Gorsuch
01/24/83	10:00 am	AG-Gorsuch
01/25/83	11:00 am	Wise, Gray-Gorsuch
01/27/83	10:00 am	Gorsuch Moot Court
01/27/83	11:00 am	E.S. on Executive Prw
01/27/83	11:30 am	Carol Dinkins
01/27/83	3:30 pm	AG-Gorsuch
01/27/83	4:15 pm	Meeting re: Gorsuch 4:15 - 5:00 pm Ward Room (West Wing, Ground Floor, White House) AG, DAG, Fred Fielding, Edwin Meese, James Baker, Michael Deaver, Ken Duberstein, Dave Gergen, Richard Darman, Craig Fuller
01/31/83	11:30 am	Wise, Walden-Gorsuch
01/31/83	4:30 pm	Gorsuch, Dinkins-EPA 1200 W. Tower
02/01/83	10:00 am	Gorsuch
02/01/83	1:30 pm	Wise
02/04/83	2:00 pm	Cunningham-Gorsuch Press
02/07/83	1:30 pm	DAG Conf Rm-Gorsuch
02/07/83	3:00 pm	Lands Conf Room-Gorsuch
02/08/83	3:30 pm	AG, DAG, Dinkins, Olson, McConnell-Gorsuch-AG office
02/09/83	9:00 am	AG office-Schmults
02/09/83	12:15 pm	McConnell, Dinkins, Olson 1603
02/10/83	10:00 am	AG-Gorsuch

Sincerely,

Paul McGrath

J. Paul McGrath
Assistant Attorney General
Antitrust Division

LETTER FROM DAVID ZERHUSEN TO JAMES SCHWEITZER, FEBRUARY 5, 1985 (MCCONNELL CALENDAR)

LAW OFFICES
JENNER & BLOCK
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
21 DUPONT CIRCLE, N.W.
WASHINGTON, D.C. 20036
(202) 466-5470

CHICAGO OFFICE
ONE IBM PLAZA
CHICAGO, ILLINOIS 60611
(312) 222-9350

DAVID E. ZERHUSEN

February 5, 1985

James J. Schweitzer, Esquire
Counsel
U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515

Re: EPA/Executive Privilege Controversy

Dear Jim:

Bob McConnell has now reviewed his 1982 personal diary and has compiled the following information that might be helpful to you. Please note that his diary does not identify the topic(s) discussed at certain of the referenced meetings; hence, the EPA/executive privilege controversy may or may not have been a subject of those meetings.

Date	Subject
Sept. 1-6, 1982	Out of town.
Sept. 10, 1982	Meeting with Rodino - regular Schmults/McConnell meeting.
Sept. 21, 1982	Immigration bill mark-up, House Committee on Judiciary.
Sept. 23, 1982	Meeting Olson/Dinkins.
Oct. 15, 1982	A.M. - Olson. P.M. - OLA retreat in Reston. Alan Parker attended.
Oct. 16, 1982	Flight to Chicago.
Oct. 19, 1982	Return from Chicago.
Oct. 21, 1982	Meeting in Olson's office re Dingell subpoena.

Oct. 24-25 (p.m.), 1982	Out of town.
Oct. 26 (p.m.)-28 (p.m.), 1982	Out of town.
Oct. 29, 1982	Breakfast Olson/Dinkins.
Oct. 31-Nov. 4 (a.m.), 1982	Out of town.
Nov. 5-21, 1982	Out of town.
Nov. 22, 1982	Meeting at White House - Fielding, Hauser, Olson - re Dingell request.
Nov. 23, 1982	Meeting - Attorney General, Deputy Attorney General, Olson - re executive privilege.
Nov. 24, 1982	Telephone conversations with Barrett. Meeting in Olson's office re Dingell.
Nov. 29-30, 1982	Telephone conversations with Barrett.
Dec. 2, 1982	Levitas Committee meeting.
Dec. 6, 1982	Meeting in Olson's office re Dingell and Levitas.
Dec. 7, 1982	Meeting in McConnell's office re EPA requests for documents.
Dec. 7-8, 1982	Immigration bill before House Rules Committee.
Dec. 8, 1982	Meeting with Levitas.
Dec. 9, 1982	Meeting with Republicans on Public Works (with Olson).
Dec. 10, 1982	Public Works votes contempt.
Dec. 13, 1982	Meeting "w/Broyhill, Roger, Daub, Marcs, etc."

Dec. 14, 1982	Energy Committee's hearing and finding of contempt.
Dec. 16, 1982	Meeting Michel, Deputy Attorney General, Olson. Immigration bill on House floor - dies at 4:00 p.m. Saturday, December 18, 1982.
Dec. 20-31, 1982	Out of town (departed 8:00 p.m. December 20).

Responding to one of your specific questions, Bob's diary contains no indication that he attended a meeting in Ted Olson's office that you indicate took place on September 30 or October 1, 1982.

This will also advise you that, during the course of a recent document search undertaken in response to Lowell Jensen's request for materials concerning the Department's handling of the Judiciary Committee investigation, Bob came across a number of documents that relate to the underlying executive privilege controversy itself. Bob believes that you and your colleagues have already reviewed these documents at OLA or elsewhere, but he wanted you to be advised of them in the event that they somehow had been overlooked. I suggest that you contact Tom Millet at DOJ should you determine to review these materials.

Let me know whether Bob or I can be of further assistance.

Very truly yours,

David E. Zerhusen

DEZ:mgg

BLANK PAGE

2940

APPENDIX 4: CORRESPONDENCE BETWEEN THE HOUSE COMMITTEE ON THE JUDICIARY AND THE DEPARTMENT OF JUSTICE

BLANK PAGE

2942

NINETY-EIGHTH CONGRESS

PETER W. RODINO, JR. (N.J.), CHAIRMAN

JACK BROOKS, TEX.
ROBERT W. KASTENMEIER, WIS.
DON EDWARDS, CALIF.
JOHN CONYERS, JR., MICH.
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KY.
WILLIAM J. HUGHES, N.J.
SAM B. HALL, JR., TEX.
MIKE SYNAR, OKLA.
PATRICIA SCHROEDER, COLO.
DAN GLICKMAN, KANS.
HAROLD WASHINGTON, ILL.
BARNEY FRANK, MASS.
GEO. W. CROCKETT, JR., MICH.
CHARLES E. SCHUMER, N.Y.
BRUCE A. MORRISON, CONN.
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLA.
HOWARD L. BERMAN, CALIF.

HAMILTON FISH, JR., N.Y.
CARLOS J. MOORHEAD, CALIF.
HENRY J. HYDE, ILL.
THOMAS N. KINDNESS, OHIO
HAROLD S. SAWYER, MICH.
DAN LUNGREN, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
BILL McCOLLUM, FLA.
E. CLAY SHAW, JR., FLA.
GEORGE W. GEKAS, PA.
MICHAEL DEWINE, OHIO

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

GENERAL COUNSEL
ALAN A. PARKER

STAFF DIRECTOR
GARNER J. CLINE

ASSOCIATE COUNSEL
FRANKLIN G. POLK

February 24, 1983

Honorable William French Smith
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

In the course of the various Congressional investigations into the ongoing controversy at the Environmental Protection Agency, serious questions have been raised by the several committees involved about the actions of the Department of Justice. Some of these questions have related to apparent conflicts of interest in the numerous roles the Department has played, and continues to play, in the controversy; other concerns have focused on the Department's unwillingness to enforce the Federal statute (2 U.S.C. Secs. 192-194) that provides criminal penalties for contempt of Congress. Additionally, questions persist about the role of the Department in the Executive Branch's withholding of information from Congress.

The Chairmen of the Committees whose panels are investigating the Environmental Protection Agency have urged the House Committee on the Judiciary to address these concerns. To meet this request and to properly discharge our legislative and oversight responsibilities, I ask that you respond to the following questions and requests as soon as possible, but not later than March 10, 1983.

1(a). Please supply a narrative description of the activities of each division, office or other unit of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA. Please list all Department personnel involved in these events.

(b). Please supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA.

2. Media accounts suggest that Department personnel may have counseled EPA Administrator Burford on withholding documents, advised the President and his staff, and negotiated with various Congressional committees on behalf of the Administration; in addition, Department personnel represented the Administration in its unsuccessful attempt

to seek declaratory relief against the House of Representatives. At the same time, the Department was responsible for prosecuting the criminal charges arising from the House's contempt citation and for investigating and prosecuting possible violations of the criminal law by Executive Branch personnel.

(a) How does the Department reconcile the appearance of a conflict of interest in simultaneously carrying out these various functions? Has the Department prepared any analysis of these conflicting functions or any guidelines as to how to deal with them? If so, please provide copies of any relevant documents.

(b) In the EPA case, what steps, if any, were taken to avoid any conflict of interest or the appearance of such a conflict? Do you have any proposals to guide the Department's actions in similar cases which may arise in the future?

(c) In this case, did the Department at any time consider either: (1) appointing a special counsel to present the contempt citation to a grand jury; or (2) authorizing the retention of outside counsel by Mrs. Burford to defend her in the criminal action? Why were these options not pursued?

3. After the House approved the contempt resolution regarding EPA Administrator Burford, the Department of Justice filed a civil complaint, subsequently dismissed by the U.S. District Court for the District of Columbia, against the House of Representatives. Although the Speaker of the House certified the facts of the case to the United States Attorney, the matter was not presented to a grand jury, as the language of 2 U.S.C. Sec. 194 would seem to require.

(a) Does the Department consider the duty of the United States Attorney under Sec. 194 to be mandatory or discretionary? Please provide the legal justification for your response. If the statute is mandatory, must the U.S. Attorney present the matter to a grand jury within a certain period of time? If so, how is the time period determined?

(b) If the Department considers the U.S. Attorney's duty to be discretionary, what steps could Congress take to assure that contumacious conduct by Executive Branch officials is promptly and vigorously prosecuted? For example, if you believe the statute is not mandatory, could it be made so?

(c) Is it the Department's position that Secs. 192-194 apply to contumacious conduct by Executive Branch officials?

(d) In this case, was the U.S. Attorney counseled or directed by officials of the Justice Department or the White House not to present the case to the grand jury? If so, please list and describe any relevant contacts.

(e) Please supply all documents in the Department's possession in any way relating to the enforcement of the Congressional contempt statute in this or any other case.

4(a). Under what circumstances, employing what criteria, and through what process, does the Department of Justice believe it appropriate for the Executive Branch to decline to comply with Congressional requests for documents, comments, interviews, or information?

(b) Please forward the Committee a copy of all Department regulations and policies that relate to Congressional requests for information, documents, interviews, or comments.

Thank you for your cooperation on this matter. The Committee looks forward to your response.

With best regards,

Sincerely,

Peter W. Rodino

PETER W. RODINO, JR.
Chairman

PWR:apw

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

March 2, 1983

The Honorable William French Smith
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

The Subcommittee on Monopolies and Commercial Law will conduct oversight and authorization hearings with respect to the Department's Office of Legal Counsel. The Subcommittee is particularly concerned about the role of the Office of Legal Counsel in the current controversy concerning the Environmental Protection Agency. So that the Subcommittee will be informed in advance of the hearing scheduled for March 10, 1983, please respond in writing to the following questions and requests by 5:00 P.M. on Monday, March 7, 1983.

(1) Did the Office of Legal Counsel furnish advice to the EPA staff, the Attorney General, the White House, or any Executive Branch official concerning documents subpoenaed by Congressional committees? If so, who furnished such advice? To whom was the advice furnished? What was the advice? Did OLC personnel review the documents before rendering the advice? Please furnish any documents embodying or relating to such advice.

(2) Did OLC furnish advice to the United States Attorney for the District of Columbia, the Attorney General, the White House, or any Executive Branch official concerning the House of Representatives' referral to the U.S. Attorney for the District of Columbia of a contempt citation against EPA Administrator Burford, and the Department's subsequent civil suit seeking declaratory relief against the House of Representatives? If so, who furnished such advice? To whom was such advice furnished? What was the advice? Please furnish any documents embodying or relating to such advice.

(3) Did OLC furnish advice to the EPA or any Executive Branch official concerning destruction of documents under subpoena? If so, who furnished such advice? To whom was it furnished? Please furnish any documents embodying or relating to such advice.

(4) Did OLC furnish advice to the Attorney General or any Executive Branch official concerning the Department's ability simultaneously to carry out its apparently conflicting roles with respect to Congressional investigations in advising Executive Branch officials and enforcing the laws of the United States? If so, who furnished the advice? To whom was it furnished? What was the advice? Please furnish any documents embodying or relating to such advice.

(5) Is OLC now giving advice to Department personnel or any Executive Branch official responsible for investigating any misconduct at the EPA? If so, who is furnishing such advice? To whom is it being furnished?

(6) Outside of giving advice, has OLC been involved in the decision not to proceed before a grand jury on the refusal to provide documents, the decision to file a civil action against the House, or any other aspect of the ongoing controversy? If so, please describe the activities that OLC has engaged in.

Thank you for your cooperation.

Sincerely,

PETER W. RODINO, JR.
Chairman

PWR:jcw

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General
Washington, D.C. 20530

March 8, 1983

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Rodino:

We are transmitting herewith the following documents concerning, directly or indirectly, the invocation of executive privilege by the President last fall to maintain the confidentiality of certain enforcement records of the Environmental Protection Agency:

Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: Refusals By Executive Branch Officials to Provide Information or Documents Demanded by Congress (January 27, 1983);

Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: History of Presidential Invocations of Executive Privilege Vis-a-Vis Congress (December 14, 1982);

Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: Response to Legal Memorandum of the General Counsel to the Clerk of the House of Representatives Regarding Executive Privilege (December 14, 1982);

Letter to Honorable Elliott H. Levitas, Chairman, Subcommittee on Investigations and Oversight, Committee on Public Works and Transportation, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs (December 9, 1982);

Memorandum for the Administrator, Environmental Protection Agency, from the President Re: Congressional Subpoenas for Executive Branch Documents (November 30, 1982);

Letter to Honorable Elliott H. Levitas, Chairman, Subcommittee on Investigations and Oversight, Committee on Public Works and Transportation, from the Attorney General (November 30, 1982);

Letter to Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from the Attorney General (November 30, 1982);

Letter to Michael F. Barrett, Jr., Chief Counsel and Staff Director, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs, with enclosure (November 24, 1982);

Memorandum for the Heads of Executive Departments and Agencies, from the President Re: Procedures Governing Responses to Congressional Requests for Information (November 4, 1982);

Letter to Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs (October 25, 1982);

Letter to Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs (October 18, 1982);

Letter to the President from the Attorney General (October 13, 1981); attached, Memorandum for the Secretary of the Interior from the President, Subject: Congressional Subpoena for Executive Branch Documents (October 13, 1981);

Letter to Honorable Joseph A. Califano, Jr., Secretary, Department of Health, Education and Welfare, from the Attorney General (September 8, 1978);

Opinion of the Attorney General Re: Subpoena Duces Tecum of House Committee - Confidentiality Requirement of Export Administration Act (September 4, 1975);

Congressional Access to Law Enforcement Files (undated); and

Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendants' Motion to Dismiss, United States v. House of Representatives, No. 82-3583 (D.D.C. Feb. 3, 1983).

Very truly yours,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosures

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General
Washington, D.C. 20530

March 8, 1983

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Rodino:

This responds to your letter of March 2, 1983, received March 3, 1983, generally requesting information regarding the role played by the Office of Legal Counsel of this Department with regard to the implementation in December of 1982 by the Administrator of the Environmental Protection Agency ("EPA") of the President's assertion of executive privilege in response to subpoenaes from two House subcommittees. You seek this information in connection with oversight and authorization hearings with respect to the Office of Legal Counsel presently scheduled for March 10, 1983. We fully understand your need to have responses to your questions promptly and we appreciate your willingness to extend your initial Monday, March 7, 1983 deadline to March 8. We have endeavored to respond in as much detail as possible in the time available. We presume that the March 10 hearing will provide you an opportunity to seek additional information as appropriate. In addition, we will be providing a lengthy response to your letter of February 24, 1983, which seeks information with respect to the role of the Department as a whole, including the Office of Legal Counsel, in connection with the current controversy concerning the EPA. We believe that information contained in that letter will materially supplement this letter. What follows are answers keyed to the six numbered paragraphs in your March 2 letter:

QUESTION (1): "Did the Office of Legal Counsel furnish advice to the EPA staff, the Attorney General, the White House, or any Executive Branch official concerning documents subpoenaed by Congressional committees? If so, who furnished such advice? To whom was the advice furnished? What was the advice? Did OLC personnel review the documents before rendering the advice? Please furnish any documents embodying or relating to such advice."

ANSWER: The Office of Legal Counsel furnished legal advice on the President's constitutional responsibilities in response to letters and subpoenas issued by the two House subcommittees for EPA documents relative to the EPA's enforcement of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"). This advice was furnished to the President, and members of the President's staff including the Counsel to the President, the Attorney General, to numerous other officials within the Department of Justice and to EPA officials. That advice was supplied by the Office of Legal Counsel under the supervision of Assistant Attorney General Theodore B. Olson with the assistance of Deputy Assistant Attorney General Larry L. Simms. Several attorney-advisers in the Office of Legal Counsel participated in the formulation of that advice particularly in the provision of legal research. Other officials in addition to those mentioned above to whom the advice was rendered included the Deputy Attorney General, the Assistant Attorney General in charge of the Land and Natural Resources Division, the Assistant Attorney General in charge of the Civil Division, the Assistant Attorney General for the Office of Legislative Affairs and various EPA officials, including the Administrator.

The subject of the advice rendered related to and involved the full range of issues that would normally be associated with the potential assertion of executive privilege with regard to documents subpoenaed by a committee of Congress. The actual advice rendered by the Office of Legal Counsel in terms of specific conclusions or opinions reached cannot in every instance clearly be segregated from the legal advice and views of others within the Department who participated in the positions ultimately taken by the Attorney General and the President. However, the product of the collective advice, which is based upon substantial particpation by the Office of Legal Counsel, is as set forth in the November 30, 1982 letter from the Attorney General to Chairman Dingell and the written instruction to the EPA Administrator from the President of the same date. In addition, Attorney General William French Smith had rendered an opinion regarding executive privilege on October 13, 1981. The legal views expressed in that opinion, which was prepared with the substantial assistance of the Office of Legal Counsel, also reflects legal advice which was subsequently rendered during the EPA matter.

The Office of Legal Counsel also provided legal advice with respect to the various attempts made by the Administration to reach a compromise over the document dispute. For example, the Office assisted in the preparation of letters transmitted to the subcommittee chairmen, including those dated October 18, 1982, October 25, 1982 and December 9, 1982. In addition, the Office of Legal Counsel furnished advice to the Attorney General regarding historical claims of executive privilege by previous Presidents, Attorneys General and other Executive Branch officials. The results of this research are articulated in memoranda dated December 14, 1982 and January 27, 1983.

The foregoing documents, which have all been previously made public, are not necessarily exclusive, but do accurately reflect advice given by the Office of Legal Counsel during this period. Oral advice was also given throughout the entire episode to various of the officials described above.

Office of Legal Counsel personnel did review the documents withheld from Congress as a part of the process of rendering the advice described above. It is impossible to say whether a particular document was reviewed prior to the rendition of specific advice, since the process stretched out over many weeks and legal advice was rendered on a relatively continuous basis, but the Office of Legal Counsel did examine each document before a final recommendation was made concerning whether it should be the subject of a claim of executive privilege in order to verify whether each specific document was within the scope of contemplated claims of privilege.

QUESTION (2): "Did OLC furnish advice to the United States Attorney for the District of Columbia, the Attorney General, the White House, or any Executive Branch official concerning the House of Representatives' referral to the U.S. Attorney for the District of Columbia of a contempt citation against EPA Administrator Burford, and the Department's subsequent civil suit seeking declaratory relief against the House of Representatives? If so, who furnished such advice? To whom was such advice furnished? What was the advice? Please furnish any documents embodying or relating to such advice."

ANSWER: The Assistant Attorney General in charge of the Office of Legal Counsel, as well as a Deputy Assistant Attorney General, advised the Attorney General and other officials within the Department of Justice regarding the referral by the Speaker of the contempt citation against the Administrator of the Environmental Protection Agency and also with respect to the Department's civil suit. No advice was provided directly to the United States Attorney, but some of the written materials provided with this letter were transmitted to the United States Attorney. With respect to the civil suit, legal analysis and comments were made during meetings to a variety of officials. However, the Assistant Attorney General in charge of the Civil Division was primarily responsible for the conduct of the civil litigation and the legal advice of the Office of Legal Counsel relative to the suit was primarily rendered to him or to his assistants.

QUESTION (3): "Did OLC furnish advice to the EPA or any Executive Branch official concerning destruction of documents under subpoena? If so, who furnished such advice? To whom was it furnished? Please furnish any documents embodying or relating to such advice."

ANSWER: We presume that these questions relate to the well-publicized incident earlier this year relative to the existence of paper shredding devices at EPA. The Office of Legal Counsel learned of the existence of such shredding devices and their use at the Environmental Protection Agency through media accounts and at no time rendered any legal advice to EPA with respect to the use of those shredding devices or the destruction of documents subject to subpoena.

QUESTION (4): "Did OLC furnish advice to the Attorney General or any Executive Branch official concerning the Department's ability simultaneously to carry out its apparently conflicting roles with respect to Congressional investigations in advising Executive Branch officials and enforcing the laws of the United States? If so, who furnished the advice? To whom was it furnished? What was the advice? Please furnish any documents embodying or relating to such advice."

ANSWER: This question presupposes that providing advice to the President, the Attorney General or to other Executive Branch officials as required by the laws of the United States is inconsistent with the enforcement of the laws of the United States. We do not accept the notion that the provision of such advice creates a conflict of interest. Both functions are imposed by statute on the Attorney General and the Department of Justice.

The question posed does not state who has made a determination that the role of providing advice to Executive Branch officials is not consistent with enforcing the laws of the United States or the precise manner in which such roles are assertedly inconsistent. Therefore, it is difficult to respond to the question. However, we will attempt to answer what we presume to be the gist of the question considering whether a conflict exists under such circumstances.

If a congressional enactment may infringe upon the constitutional powers of the Executive, the Department not only renders advice to the Executive, but represents the Executive in court in any litigation over the constitutionality of that statute. That has long been the position of the Department of Justice. See, Buckley v. Valeo, 426 U.S. 1 (1976); Chadha v. Immigration & Naturalization Service, 634 F. 2d 408 (9th Cir. 1980), appeal pending, Nos. 80-1832, et al. (S. Ct., reargued Dec. 9, 1982). That does not represent a conflict of interest. It simply represents a situation in which, because of conflicting interests between two Branches of Government, each of the two Branches must select and provide their own counsel. Indeed, if the Department of Justice, a part of the Executive Branch, did not represent the views of the Executive in such circumstances, its failure to do so would be a dereliction of duty.

The Office of Legal Counsel was fully aware at the outset of this particular controversy that the Department of Justice generally, and the Office of Legal Counsel in particular, had historically acted as adviser to Executive Branch officials who were appearing before committees of Congress pursuant to subpoenas for documents issued by those committees. The Office advised the Attorney General and others of the historical functions of the Department throughout this controversy.

To cite all of the historical examples would be redundant, but more recent examples are illustrative. For example, on May 25, 1974, the Attorney General advised the Secretary of the Treasury that, as a matter of statutory law, the House Committee on the Judiciary was not entitled to certain tax return information requested by the Committee by letter. On September 4, 1975, the Attorney General advised the Secretary of Commerce that the Secretary had statutory discretion to refuse to comply with a subpoena for certain documents issued by the House Committee on Interstate and Foreign Commerce. [1] On September 8, 1978, the Attorney General advised the Secretary of Health, Education and Welfare that the Secretary was prohibited by statute from complying with a request of the House Committee on Interstate and Foreign Commerce for certain trade secret information. And on October 13, 1981, the Attorney General advised the President that assertion of executive privilege would be appropriate in response to a subpoena issued by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce (the successor committee to the House Committee on Interstate and Foreign Commerce).

These examples share several common threads. First, whether they involved document requests or subpoenas, all of these situations carried the theoretical potential for an ultimate assertion that Cabinet officers were in contempt of Congress. Second, all involved the provision of legal advice to the Cabinet officer involved by the Attorney General and the reliance by the Cabinet officer on that advice to refuse the production of the documents.

---

[1] In hearings held with respect to that subpoena, during which Secretary Morton declined to produce the subpoenaed documents, Chairman Moss commented that the Attorney General was expressing the legal position of the Executive Branch. He stated, in regard to the Secretary's reliance on the advice of the Attorney General, that "the Attorney General at this moment appears as a partisan advocate for the executive branch of government and the Congress has to protect its own powers." Hearings on Contempt Proceedings Against Secretary of Commerce, Rogers C.B. Morton, before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, 94th Cong. 1st Sess. 135 (1975).

Third, all these incidents, because of the public record reflecting their occurrence, evidence at least an implicit understanding on the part of Congress regarding the role played by the Attorney General and the Department of Justice as advisers to the President and his Cabinet.

What is, of course, unique to the present circumstances is that a House of Congress, for the first time in our history, cited for contempt an Executive Branch official for refusal to produce documents subpoenaed by one of its subcommittees.

QUESTION (5): "Is OLC now giving advice to Department personnel or any Executive Branch official responsible for investigating any misconduct at the EPA? If so, who is furnishing such advice? To whom is it being furnished?"

ANSWER: The Office of Legal Counsel is engaged at virtually all times in providing legal advice to the President, to the Attorney General, and to all officials within the Department of Justice. That is its function as set out in 28 C.F.R. § 0.25. The Office of Legal Counsel is not, however, actively involved on an ongoing, continuous basis with the inquiries which are being conducted under the supervision of the Criminal Division. If a legal question were to arise and if the Assistant Attorney General of the Criminal Division felt that he needed the assistance of the Office of Legal Counsel in resolving that question, a judgment would be made at that time as to the propriety of seeking and providing legal advice in the normal manner under the peculiar facts then prevailing.

QUESTION (6): "Outside the giving of advice, has OLC been involved in the decision not to proceed before a grand jury on the refusal to provide documents, the decision to file a civil action against the House, or any other aspect of the ongoing controversy? If so, please describe the activities that OLC has engaged in."

ANSWER: The activities of the Office of Legal Counsel in this matter have been confined to the provision of advice, both oral and written, on the various issues raised by this controversy.

We trust that the responses to your specific questions will be useful to your committee in preparation for the March 10, 1983 hearing and we look forward to cooperating with your inquiry at that hearing. We are transmitting herewith copies of all documents referred to above for the use of the Committee. We are also transmitting certain other materials pertinent to these subjects.

Sincerely,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Attachments

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 9, 1983

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Rodino:

This is in response to your letter of February 24, 1983 to the Attorney General relative to the controversy involving the Environmental Protection Agency ("EPA") and the role of the Department of Justice in the President's claim of executive privilege over certain documents contained in open enforcement files in the custody of EPA. We appreciate your interest in this subject and we are pleased to cooperate with you and your Committee's inquiry.

Before setting forth detailed responses to the specific questions enumerated in your February 24 letter, we believe it would be appropriate to respond directly to the suggestions which apparently have been made by certain committee chairmen, on whose behalf your February 24 inquiry was made, that there have been "serious questions" raised concerning "apparent conflicts of interest" in the various roles the Department has played in this matter. We believe that a response to such suggestions requires an understanding of the historic role played by the Attorney General and this Department as chief legal adviser to the President and his subordinates on the full range of legal issues that arise continually concerning the execution of the law by the Executive Branch, particularly those issues relative to the separation of powers between the three equal, independent and coordinate branches of the Government. We do not feel that anyone familiar with this history could reasonably regard the positions which the Attorney General and his subordinates have taken and the responsibilities which they have discharged in the matter before us as presenting any "serious" questions of conflicts of interest.

We do not agree with those who may have suggested that the conduct of this Department or its officials has been inappropriate in any way or inconsistent with the duties imposed upon us by law. It must be emphasized that the circumstances which you describe in your letter are unprecedented in our Nation's history. Never before has a House of Congress cited for contempt an Executive Branch official who asserted the President's executive privilege to withhold documents from a committee of Congress. As you are aware, virtually every President has asserted executive privilege over documents sought by Congress, some on numerous occasions, and many have done so relative to the same type of open law enforcement files that were involved in the President's instruction to the EPA Administrator last November 30. In fact, most previous Presidents, as illustrated by well-known and widely reported positions taken by President Roosevelt on April 30, 1941 and President Truman on March 7, 1952, were a great deal more restrictive with respect to the production of documents from open law enforcement files than was President Reagan when he directed the Administrator of the EPA to withhold only such documents from open law enforcement files as were deemed especially sensitive to the actual or potential prosecution of specific cases. Under the standard articulated on November 30, 1982, hundreds of thousands of pages of documents were made available to subcommittees of the House that might have been withheld under positions asserted in prior Administrations. Nonetheless, never before has a House of Congress responded to a presidential claim of privilege with a contempt of Congress citation and a demand for criminal prosecution of the official who did no more than assert executive privilege on behalf of the President. Notwithstanding these unprecedented circumstances, however, the legal issues raised in this instance are essentially similar to the issues which always have been presented by the rendition of legal advice by the Attorney General and/or officials or this Department regarding compliance by Executive Branch officials with subpoenas issued by committees of Congress since 1857 when the contempt of Congress provisions, 2 U.S.C. §§ 192 & 194, were enacted.

Neither the Department nor any of its officials have engaged in any conduct which would constitute a conflict of interest in connection with positions the Department has taken relative to the President's claim of executive privilege.

The Department of Justice, which is lodged in the Executive Branch of the Government of the United States, has indeed provided advice and counselling to the President of the United States and those who assist him in the performance of his constitutionally delegated duties. This responsibility has involved the Department and its officials in contacts with members of Congress with respect to demands by Congress for documents from the Executive Branch for over 100 years. Prior to the creation of the Department of Justice in 1870, this same function was often performed by the Attorney General himself, or his Assistants. The specific functions of the Department of Justice in this regard in this Administration are as set forth in the presidential directive dated November 4, 1982, which outlines "Procedures Governing Responses to Congressional Requests for Information". This procedure is substantively very similar to procedures outlined in a March 24, 1969 presidential directive, which sets out the procedures which were followed initially by President Nixon and by his successors, Presidents Ford and Carter. The procedures outlined in that memorandum elaborated upon a position taken by President Kennedy on March 7, 1962, which was followed by Presidents Kennedy and Johnson.

As you will see from the compilations of historical incidents of claims of executive privilege (memoranda dated December 14, 1982 and January 27, 1983 to the Attorney General), the Attorney General and the Department of Justice have been involved directly in presidential responses to congressional demands for information throughout our Nation's history. The first Attorney General to advise the President regarding what information should be supplied by the President to Congress was Edmund Randolph, the Nation's very first Attorney General, who gave such advice to our first President. The attached materials are, of course, merely illustrative examples and are by no means exhaustive.

The Attorney General and the Department which he heads are responsible for giving legal advice to the President of the United States and to the Executive Branch in general. The Judiciary Act of 1789 required the Attorney General "to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments . . . ."

Today, 28 U.S.C. § 511 requires the Attorney General to give his "advice and opinion on questions of law when required by the President." He has a similar statutory responsibility with regard to other Executive Branch officials, 28 U.S.C. §§ 512, 513, 514. The Attorney General is also expressly directed by statute to conduct, supervise and argue suits in the courts. 28 U.S.C. §§ 515, 516, 517, 518 and 519. The Attorney General has special responsibilities to the President with regard to constitutional questions. Article II, § 2 of the Constitution expressly provides that the President "may require the Opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective Offices." The Supreme Court has held that "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution and the interpretation of its powers by any branch is due great respect from the others." United States v. Nixon, 418 U.S. 683, 703 (1974). In interpreting the Constitution, the President must, of necessity, turn to the Attorney General. As you know, claims of executive privilege raise constitutional questions because the privilege "derive[s] from the supremacy of each branch within its own assigned area of constitutional duties." Id. at 705. The United States Court of Appeals for the District of Columbia Circuit has likened the privilege "'to that between a congressman and his aides under the Speech and Debate Clause [and] to that among judges, and between judges and their law clerks . . . .'" Senate Select Committee v. Nixon, 498 F. 2d 725, 729 (D.C. Cir. 1974), quoting Nixon v. Sirica, 487 F.2d 700, 717 (D.C. Cir. 1973).

In the circumstances which your Committee is presently examining, the Department of Justice provided advice to the President concerning his claim of executive privilege as articulated in the President's memorandum to the Administrator of the EPA dated November 30, 1982. This instruction was based upon the legal views of the Attorney General, which were communicated directly and in a timely manner to Congress by a letter dated November 30, 1982 from the Attorney General to Chairman Dingell of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce. On the same date, the Attorney General also transmitted a copy of that letter to Chairman Levitas of the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation.

Pursuant to the President's instruction, which included an injunction to continue efforts to provide information to Congress, Department officials met with representatives of the congressional subcommittees seeking information in an effort to provide either documents or other information in a manner consistent with the constitutional responsibilities and duties of the two Branches. The Administration's last formal proposal to attempt to resolve the dispute prior to the contempt of Congress citation was in a letter dated December 9, 1982 to Chairman Levitas, a copy of which is attached. Earlier written communications, dated October 25, 1982 and October 18, 1982, to Chairman Dingell are also enclosed.

Consistent with the advice of the Attorney General and the instructions of the President, a representative of the Department of Justice (the Assistant Attorney General for the Office of Legal Counsel) accompanied the EPA Administrator, who appeared in her capacity as Administrator of the Environmental Protection Agency, before congressional subcommittees on December 2, 1982 and December 14, 1982 in order to provide assistance in responding to inquiries concerning the basis for the President's claim of executive privilege and advice concerning constitutional questions relative to the claim of executive privilege. The Assistant Attorney General stated on the record at the December 14, 1982 hearing that he was appearing in his capacity "as Assistant Attorney General to Mrs. Gorsuch in her capacity as Administrator of the EPA, particularly in connection with the fact that her testimony will involve a claim of executive privilege . . . ."

Representatives of the Department of Justice, after the House approved a resolution of contempt against the EPA Administrator on December 16, 1982, sought to resolve the dispute between the House of Representatives and the President over the President's claim of executive privilege by filing a civil action in the United States District Court for the District of Columbia. An effort to reach a resolution of the dispute in the context of this civil litigation was resisted by the House of Representatives, and the District Court dismissed the action in the exercise of its discretion based upon considerations of judicial restraint. In dismissing that civil action, the District Court urged the parties to resolve their dispute through negotiation, stating that "compromise and cooperation, rather than confrontation, should be the aim of the parties." Pursuant to the court's suggestion, representatives of this Department (the Deputy Attorney General and the Assistant Attorney General for the Land and Natural Resources Division) and the President (Counsel to the President) thereafter met and negotiated with representatives of the House. An agreement was reached on February 18, 1983, which was intended by the parties thereto to bring about an end to the dispute with the House Committee on Public Works and Transportation and its Subcommittee on Investigations and Oversight. That Memorandum of Understanding established a mechanism and procedure for the final resolution of the dispute which gave rise to the contempt citation. Department officials and EPA officials are engaged in performing their part of the agreement and we believe that they have been doing so in a timely and acceptable fashion.

The settlement agreement with the subcommittee of the House Public Works and Transportation Committee states that following "satisfactory implementation of the procedures set forth herein, the Chairman of the Subcommittee represents that he will undertake and use his best efforts to introduce an appropriate resolution . . . . containing recitals that implementation of the procedures established herein constitutes a purging of the . . . resolution [of contempt] . . . , certifying that compliance with the Subcommittee's subpoena has been effected; [and] that the House finds no reason for further proceedings . . . ." We believe that the procedures set forth in the agreement are being satisfactorily implemented and that the Chairman of the Subcommittee will introduce and seek passage of such a resolution in good faith and that, because of full and faithful performances by the Executive Branch, such resolution will be passed by the House of Representatives.

At no time during the foregoing events did the Department of Justice act in a manner that was inconsistent with its obligation to assist the President in the performance of his duties as required by the Constitution. At all times during the negotiations, during committee hearings and in the civil litigation initiated by the Department, Congress was represented by numerous Members of Congress, committees, subcommittees, and their respective chairmen and a number of counsel employed in various capacities by Congress. The advice given by the Department of Justice and the positions taken by it throughout these events were consistently and clearly identified as the positions of the Executive Branch.

Whenever a congressional enactment or position is perceived as infringing upon the constitutional powers or responsibilities of the Executive, the Attorney General and the Department of Justice not only give advice to the President, but represent the Executive Branch position in court. That has long been the position of the Executive. See, e.g., Buckley v. Valeo, 426 U.S. 1 (1976) and the case now pending in the Supreme Court, Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), appeal pending, Nos. 80-1832, et al. (S.Ct., reargued Dec. 9, 1982). The Legislature, on those occasions, selects its own counsel. If the Executive believes that a law infringes on the power of the Presidency, he has no choice under the Constitution but to challenge its constitutionality, for if he fails to do so, the institutional position of the Executive Branch will go unrepresented and he will have abandoned his duty. This subject was discussed at length in hearings before the Subcommittee on Separation of Powers of the Committee on the Judiciary, United States Senate on December 12, 1975 and February 19, 1976. Thorough written and oral testimony pertinent to this subject was provided by the Department for those hearings which we will not attempt to repeat here.

There is and has been no "conflict" of interest in the positions taken by the Department of Justice. Any perceptions to the contrary are erroneous.

The following is a response to the individual questions contained in your letter:

> 1(a). "Please supply a narrative description of the activities of each division, office or other unit of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA. Please list all Department personnel involved in these events."

A detailed narrative description of the activities of the dozens of Department officials who have been involved in this matter since its outset would be virtually impossible to compile without the expenditure of vast amounts of time and resources. We will attempt, in response to your questions, to outline the differing roles and contributions of the various Department components in summary form so that you can determine whether that is adequate for your purposes or whether you need any further specific information.

The Attorney General has received the advice, guidance and consultation at various times, directly and indirectly, and in varying degrees from his own staff, the Deputy Attorney General and his staff, the Associate Attorney General and his staff, the Solicitor General and his staff, the Assistant Attorney General for the Office of Legal Counsel and his staff, the Assistant Attorney General for the Office of Legislative Affairs and his staff, the Assistant Attorney General for the Land and Natural Resources Division and her staff, the Assistant Attorney General for the Civil Division and his staff, the Assistant Attorney General for the Criminal Division and his staff, and numerous other officials and employees of the Department of Justice. The relative functions and responsibilities of the components which have principally been involved in the process are described briefly in the following paragraphs:

(a) The Attorney General provided advice to the President and members of the President's staff and communicated the legal basis for the President's decision in letters to House Subcommittees. He did so with the advice, assistance and participation of many of the officials identified herein. He supervised, through normal departmental channels of supervision, the work of the other components.

(b) The Deputy Attorney General provided advice and assistance to the Attorney General, assisted the Attorney General in all of his responsibilities with respect to supervision of the Department of Justice and participated directly in negotiating the settlement with the House Public Works and Transportation Committee and its Subcommittee.

(c) The President's instruction to the Administrator of the EPA and the Attorney General's legal analyses were prepared under the Attorney General's supervision by and under the direction of the Assistant Attorney General for the Office of Legal Counsel. That Office prepared numerous legal memoranda, assisted in the drafting of various documents and provided legal advice where requested by other components of the Department.

(d) Relationships with the EPA, decisions regarding particular documents and their sensitivity from a law enforcement standpoint and ongoing relationships with EPA in the conduct of litigation subject to EPA jurisdiction were primarily handled in the Land and Natural Resources Division under the supervision of the Assistant Attorney General of that Division.

(e) Relationships between the Department of Justice and Congress were under the primary supervision of the Office of Legislative Affairs. Correspondence was generally approved and signed by the Assistant Attorney General of that Office and all other congressional communications were generally conducted through or under the supervision of that Office.

(f) Preparation of the civil litigation and pleadings relative thereto and appearances in court were primarily supervised by the Civil Division under the leadership of the Assistant Attorney General for that Division.

(g) Inquiries concerning alleged criminal conduct are under the supervision of the Criminal Division with supervision by the Assistant Attorney General of that Division in consultation with the Associate Attorney General and his staff.

Many other officials in the Department participated in various ways, from the providing of assistance in responding to inquiries from the media to legal research, writing and clerical assistance. The principal officials involved in the events about which you have inquired are the officials listed.

> 1(b). "Please supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA."

The following is a list of letters, legal memoranda, pleadings and other documents which have been made public relative to this matter. Copies of these items are enclosed with this letter. The list may not be exhaustive, but it represents the major expressions by the Department relative to the issues about which you have inquired.

Letter to the Administrator, Environmental Protection Agency, from Edward C. Schmults, Deputy Attorney General (March 7, 1983);

Letter to the Administrator, Environmental Protection Agency, from Edward C. Schmults, Deputy Attorney General (March 4, 1983);

Memorandum of Understanding Between the Committee on Public Works and Transportation and the Department of Justice Concerning Documents Subpoenaed From Environmental Protection Agency (February 18, 1983);

Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: Refusals By Executive Branch Officials to Provide Information or Documents Demanded by Congress (January 27, 1983);

Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: History of Presidential Invocations of Executive Privilege Vis-a-Vis Congress (December 14, 1982);

Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: Response to Legal Memorandum of the General Counsel to the Clerk of the House of Representatives Regarding Executive Privilege (December 14, 1982);

Letter to Honorable Elliott H. Levitas, Chairman, Subcommittee on Investigations and Oversight, Committee on Public Works and Transportation, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs (December 9, 1982);

Memorandum for the Administrator, Environmental Protection Agency, from the President Re: Congressional Subpoenas for Executive Branch Documents (November 30, 1982);

Letter to Honorable Elliott H. Levitas, Chairman, Subcommittee on Investigations and Oversight, Committee on Public Works and Transportation, from the Attorney General (November 30, 1982);

Letter to Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from the Attorney General (November 30, 1982);

Letter to Michael F. Barrett, Jr., Chief Counsel and Staff Director, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs, with enclosure (November 24, 1982);

Memorandum for the Heads of Executive Departments and Agencies, from the President Re: Procedures Governing Responses to Congressional Requests for Information (November 4, 1982);

Letter to Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs (October 25, 1982);

Letter to Honorable John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs (October 18, 1982);

Letter to Michael F. Barrett, Jr., Chief Counsel and Staff Director, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, from Alfred S. Regnery, Deputy Assistant Attorney General, Land and Natural Resources Division (October 13, 1982);

Letter to the President from the Attorney General (October 13, 1981); attached, Memorandum for the Secretary of the Interior from the President, Subject: Congressional Subpoena for Executive Branch Documents (October 13, 1981);

. Letter to Honorable Joseph A. Califano, Jr., Secretary, Department of Health, Education and Welfare, from the Attorney General (September 8, 1978);

Opinion of the Attorney General Re: Subpoena Duces Tecum of House Committee - Confidentiality Requirement of Export Administration Act (September 4, 1975);

Memorandum for the Heads of Executive Departments and Agencies, from the President, Subject: Establishing a Procedure to Govern Compliance with Congressional Demands for Information (March 24, 1969);

Attorney General Order No. 116-56 (May 15, 1956);

40 Op. A.G. 45 (1941);

Congressional Access to Law Enforcement Files (undated); and

Certain portions of Plaintiffs' pleadings filed with the court in United States v. House of Representatives, No. 82-3583 (D.D.C. Feb. 3, 1983).

2. The preliminary portion of your question No. 2 states that:

> "[m]edia accounts suggest that Department personnel may have counseled EPA Administrator Burford on withholding documents, advised the President and his staff, and negotiated with various Congressional committees on behalf of the Administration; in addition, Department personnel represented the Administration in its unsuccessful attempt to seek declaratory relief against the House of Representatives. At the same time, the Department was responsible for prosecuting the criminal charges arising from the House's contempt citation and for investigating and prosecuting possible violations of the criminal law by Executive Branch personnel."

Before answering the specific questions set out below, several preliminary observations are appropriate. First, the public record in this particular matter already exhaustively documents the fact that, from the outset, the Department of Justice provided legal advice to the President, the Counsel to the President, and to the EPA as an incident to the President's claim of executive privilege. During this period, the Department of Justice was not, contrary to the implication of a portion of this question, "responsible for prosecuting criminal charges arising from the House's contempt citation". The Speaker of the House of Representatives referred the contempt citation to the United States Attorney on December 17, 1982. Many of the events set out in question 2 predate the reference of that contempt citation by the Speaker. Thus, prior to the submission to the United States Attorney of the contempt citation, the question of an alleged violation of 2 U.S.C. § 192 or the issue of the obligation of any official under 2 U.S.C. § 194 were only possibilities and were by no means clearly indicated since neither House of Congress had ever before in history invoked 2 U.S.C. § 192 against an Executive Branch official who had exercised a presidential claim of executive privilege.

After the House of Representatives took the unprecedented step on December 16, 1982 of holding the EPA Administrator in contempt and directing the Speaker to refer that contempt to the United States Attorney, the Department brought a civil action to determine the relative rights, obligations and constitutional responsibilities of the Branches in this matter. The United States District Court for the District of Columbia had determined that a civil suit by a congressional committee raising such issues was justiciable. Senate Select Committee v. Nixon, 370 F. Supp. 521 (D.D.C. 1974), aff'd 498 F.2d 725 (D.C. Cir. 1974)(en banc). While some individuals have apparently argued that it is a "conflict of interest" to seek a judicial ruling regarding an unprecedented constitutional question such as this rather than immediately moving to prosecute an official who had merely implemented a presidential assertion of a responsibility under the Constitution, we cannot accept such a characterization.

The answers to your specific questions are as follows:

> 2(a). "How does the Department reconcile the appearance of a conflict of interest in simultaneously carrying out these various functions? Has the Department prepared any analysis of these conflicting functions or any guidelines as to how to deal with them? If so, please provide copies of any relevant documents."

In the first place, it is necessary briefly to discuss the elusive concept of an "appearance of a conflict of interest." We believe that government officials should be sensitive to circumstances which create a genuine, material and meaningful appearance of a conflict of interest and that those situations should, if possible, be avoided. However, the term "apparent conflict of interest" should not be employed loosely, as some have, to condemn whatever happens to offend, for whatever reason, one individual's sensibilities. Nor should it be used lightly to disqualify an officer or especially an entire government department from performing those tasks which have been expressly assigned by law to that official or that agency or that branch of government under the Constitution. Common sense and realistic assessments of expressly assigned responsibilities must enter into the analysis, especially where there is a proper opportunity for meaningful public evaluation of actual performance. An "appearance" of a conflict of interest should not be used simply as a convenient excuse to avoid a lawfully imposed duty. Finally, as expressed recently by the United States Court of Appeals for the Second Circuit, "appearance of impropriety is simply too slender a reed on which to rest a disqualification order except in the rarest of cases." Bd. of Ed. of N.Y. City v. Nyquist, 590 F.2d 1241 (2d Cir. 1979).

With respect to the functions actually performed by the Department of Justice in this case, we are not aware of a single instance in which any Executive Branch official has ever refused to comply with compulsory process issued by any committee of Congress without that official's having sought and received full counselling by the Department of Justice. This has been true whether the refusal to provide documents sought through compulsory process was based upon statute, see, e.g., 42 Op. A.G. 485 (1974) (Attorney General advised the Secretary of the Treasury that the House Committee on the Judiciary was not entitled as a matter of statute to certain tax return information); 43 Op. A.G. No. 4 (Sep. 4, 1975) (Attorney General advised the Secretary of Commerce that he had statutory discretion to refuse to comply with subpoena issued by House Committee on Interstate and Foreign Commerce for certain documents); 43 Op. A.G. No. 21 (Sep. 8, 1978) (Attorney General advised Secretary of Health, Education and Welfare that he was prohibited from disclosing certain trade secret information to House Committee on Interstate and Foreign Commerce); or when the refusal to provide documents was based on an assertion by the President of his executive privilege, see, e.g., 43 Op. A.G. No. 31 (Oct. 13, 1981) (Attorney General advised President that assertion of Executive privilege would be appropriate with regard to documents subpoenaed by the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce). Indeed, with regard to the particular events which your committee is examining, the Attorney General, with the knowledge and approval of the President, advised Chairman Dingell and Chairman Levitas by separate letters dated November 30, 1982 regarding the legal position of the Executive Branch with regard to the then-outstanding subpoenas issued by the subcommittees chaired by them.

These examples, which are to our knowledge representative of the role the Department of Justice has historically played with regard to requests for documents directed to the Executive Branch by committees of Congress, establish both the propriety of the counselling role played by the Department of Justice in these situations and the fact that Congress has been fully aware of this role in such situations. It has not been necessary to "reconcile" the various roles played by this Department as counselor with its potential function under 2 U.S.C. § 194 because never in history has Congress adopted a contempt of Congress resolution when a refusal to produce documents has been by a coordinate branch of government. We have, however, found one instance when a similar question was raised before a subcommittee of Congress. During the previous Administration, in a hearing held on April 29, 1980, before the Subcommittee on Environment, Energy, and Natural Resources of the House Committee on Government Operations, a representative of the Department of Justice (a Deputy Assistant Attorney General in the Office of Legal Counsel) accompanied the Secretary of Energy as the Secretary's counsel in connection with the Secretary's appearance responding to a subpoena for documents issued by that Subcommittee. During the hearing, the Subcommittee Chairman suggested that a conflict of interest might exist with regard to this representation, to which suggestion the Deputy Assistant Attorney General responded that it would be inappropriate to consider such a potential as a disqualifying factor. Suggesting that the proper course was to consider such contingencies when, as and if they became a reality, he stated:

> "The position of the Department of Justice in its representation guidelines has long been that if, at a later time, it becomes apparent that a prosecution of any official who testifies on behalf of the Executive Branch is in order -either through perjury, or contempt, or for other malfeasance -- at that time it would be necessary for the official to seek private counsel. Until that time it is and has been for quite some time our position that representation is appropriate." (Transcript of Hearing at 9.)

We believe that the President should continue to seek advice and assistance from the Attorney General when legal questions arise, particularly concerning questions which have constitutional dimensions. We do not believe that this necessary and salutary practice should be diminished simply because, at some later date, allegations might be made concerning law violations by an Executive Branch official whose official capacity might have been involved in the previous legal advice.

> 2(b). "In the EPA case, what steps, if any, were taken to avoid any conflict of interest or the appearance of such a conflict? Do you have any proposals to guide the Department's actions in similar cases which may arise in the future?"

Counselling rendered by the Department of Justice and all other actions taken by the Department of Justice in this matter were fully consistent with prior practice. The EPA Administrator's communication to both Subcommittees of the President's assertion of executive privilege was based on legal advice provided to the President by the Attorney General. We fully expect that the Memorandum of Understanding resolving this dispute will be fully and fairly carried out by all parties to it and that it will not be necessary to develop any further procedures or guidelines.

Because the President and others have asked the Department to activate its criminal investigative function to look into various allegations regarding possible criminal conduct associated with EPA, the Department has determined not to act as counsel to EPA witnesses appearing before congressional committees looking into the same allegations. We believe that this is an appropriate and reasonable step with respect to "appearances" and does not preclude legal assistance by agency lawyers or other Executive Branch lawyers for witnesses before congressional investigative committees if that is indicated under the circumstances.

Finally, analysis of questions regarding conflicts of interest, especially "appearances" of conflicts of interest, depends initially upon an examination of the "interests" at stake. In this case, the Legislative Branch's interest in seeking documents in the possession of the Executive Branch was aggressively represented by attorneys employed by components of the House of Representatives whereas the President's constitutional responsibilitites were asserted by the Department of Justice. Those fundamental competing interests were represented by counsel from the separate Branches. We do not perceive a conflict in such circumstances.

> 2(c) "In this case, did the Department at any time consider either: (1) appointing a special counsel to present the contempt citation to a grand jury; or (2) authorizing the retention of outside counsel by Mrs. Burford to defend her in the criminal action? Why were these options not pursued?"

"Consideration" regarding the appointment of a "special counsel" to present the contempt citation to the grand jury would have been premature unless and until it was appropriate to consider whether such a prosecution was possibly indicated under the Constitution and the peculiar circumstances of this case. We do not believe that it was or is. Civil proceedings were initiated to seek a judicial resolution of the constitutional questions. The court determined that negotiations rather than judicial decrees presented a preferable vehicle for the solution of this dispute. The Department immediately pursued the court's suggestions in this regard. As a result of intensive negotiations, a solution to the dispute was developed which we believe is fair and reasonable under the circumstances of this situation and properly sensitive in this case to the interests of Congress and the President. We are confident that it will be successful and will eliminate the need for further discussion of 2 U.S.C. § 194.

The Department of Justice did not consider authorizing the retention of outside counsel by the EPA administrator to defend herself in a criminal proceeding because no such proceeding was initiated. Had the House of Representatives brought some sort of an action to seek to compel prosecution, the Department of Justice would, consistent with the circumstances of this particular case, have considered appearing in some capacity in the defense of that action. If so, its appearance would have been, in effect, a defense of the EPA Administrator's actions perfecting, on the President's behalf, his assertion of executive privilege.

The preliminary portion of your question No. 3 states that:

> "3. After the House approved the contempt resolution regarding EPA Administrator Burford, the Department of Justice filed

BEST COPY AVAILABLE

> a civil complaint, subsequently dismissed by the U.S. District Court for the District of Columbia, against the House of Representatives. Although the Speaker of the House certified the facts of the case to the United States Attorney, the matter was not presented to a grand jury, as the language of 2 U.S.C. Sec. 194 would seem to require."

This question assumes that 2 U.S.C. § 194 requires that a certification under that section by the Speaker requires identical and inflexible treatment in all cases under all circumstances. That is a premise we do not necessarily accept, although we emphasize that our responses to your specific questions will be tied to the specific facts of the December 16, 1982 contempt citation and the facts surrounding that event. We observe that while 2 U.S.C. § 194 appears to impose a mandatory duty on the Speaker of the House of Representatives, the courts have held that, in fact, the exercise of discretion by the Speaker is required. Wilson v. United States, 369 F.2d 198 (D.C. Cir. 1966). Thus, the courts have not approached this statute with rigid inflexibility.

The answers to your specific questions are as follows:

> 3(a). "Does the Department consider the duty of the United States Attorney under Sec. 194 to be mandatory or discretionary? Please provide the legal justification for your response. If the statute is mandatory, must the U. S. Attorney present the matter to a grand jury within a certain period of time? If so, how is the time period determined?"

It is neither prudent nor possible to answer this question in a vacuum. We are unaware of any case in which a court has held that the Executive Branch can be compelled by the courts or by the Congress to bring a prosecution of a specific individual in specific circumstances. Prosecutorial discretion has, time after time, been held to be lodged in the Executive Branch exclusively. However, we do not find it necessary to assume that such a question can reasonably be answered for all circumstances. Under the unique and peculiar facts of this situation, particularly in light of the apparently acceptable settlement which the parties have reached and are now in the process of implementing, we believe that it would not have been appropriate to prosecute and that the Department had the discretion not to do so.

We do not believe 2 U.S.C. § 194 contains any specific mandatory time limit and it is not possible to determine what, if any, limits a court would impose. The purpose of the statute appears to be punitive and, under the facts of the instant case, we cannot conceive that a court would hold that the U.S. Attorney acted unreasonably.

> 3(b). "If the Department considers the U.S. Attorney's duty to be discretionary, what steps could Congress take to assure that contumacious conduct by Executive Branch officials is promptly and vigorously prosecuted? For example, if you believe the statute is not mandatory, could it be made so?"

We reject the concept that it could be "contumacious conduct" for the President of the United States to exercise a presumptively valid aspect of the powers allocated to him and the responsibilities imposed on him under the Constitution. We do not believe, however, that Congress has been or ever will be unable to obtain that information which is necessary to its legislative and oversight functions. There are many circumstances in which "contumacious conduct" by an executive official would not involve questions of executive privilege and may well be subject to prosecution under the contempt of Congress statute. There has not heretofore been any need to change the law to address such contingencies.

We cannot answer whether the statute could be made mandatory without answering abstract hypotheticals, which seems to be an inadvisable course in such unprecedented areas of the law.

> 3(c). "Is it the Department's position that Secs. 192-194 apply to contumacious conduct by Executive Branch officials?"

We believe that there are many contexts other than those implicated by the circumstances of the present controvsy when an Executive Branch official, at the direction and on behalf of the President, asserts executive privilege in response to a subpoena issued by a committee of Congress where 2 U.S.C. §§ 192 and 194 may be applicable.

Thus, we believe that the statute probably does apply to Executive Branch officials; whether it does in all cases is another question. We are reluctant to speculate concerning hypothetical facts embracing a universe of possibilities.

> 3(d). "In this case, was the U.S. Attorney counseled or directed by officials of the Justice Department or the White House not to present the case to the grand jury? If so, please list and describe any relevant contacts."

No. However, the Department believes the U.S. Attorney acted properly throughout this matter and concurs in his course of conduct. Department officials did consult with the U.S. Attorney regarding the civil suit. The Department is not aware of any counseling or directing by the White House to the U.S. Attorney regarding submitting the case to the grand jury.

> 3(e). "Please supply all documents in the Department's possession in any way relating to the enforcement of the Congressional contempt statute in this or any other case."

As indicated above, the material supplied herewith and the papers filed by this Department in the civil action brought by the Department in this matter, which are also attached for the convenience of the committee, should provide an adequate basis for an examination of the Department's positions relative to these issues. We remain willing to respond to additional questions.

> 4(a). "Under what circumstances, employing what criteria, and through what process, does the Department of Justice believe it appropriate for the Executive Branch to decline to comply with Congressional requests for documents, comments, interviews, or information?"

The procedures governing response of Executive Branch agencies to congressional requests are generally contained in the President's November 4, 1982 memorandum to all departments and agencies. The substantive criteria governing

Executive Branch determinations not to comply with congressional requests are generally set forth in the Attorney General's opinion to the President of October 13, 1981 and his letter to Chairman Dingell of November 30, 1982. The congressional requests discussed in those materials contemplate a constitutional issue of executive privilege. Congressional requests that raise issues of statutory authority to comply are another matter which we have not attempted to address here.

> 4(b) "Please forward the Committee a copy of all Department regulations and policies that relate to Congressional requests for information, documents, interviews, or comments."

In addition to the President's November 4, 1982 memorandum referred to above, the Department is generally guided by Attorney General Order No. 116-56 of May 15, 1956, a copy of which is attached. We should emphasize in this regard that each request of a committee of Congress for information, documents, interviews or comments are handled on a case-by-case basis. As you are aware, purely legislative comments are processed under currently applicable guidance issued by the Office of Management and Budget.

We very much appreciate the opportunity to respond to the questions asked and issued raised in your February 24, 1983 letter to the Attorney General. We would welcome the opportunity to send an appropriate representative to testify before your Committee on any or all of the issues raised in your February 24 letter, and we expect that such testimony, in addition to the materials supplied herewith, would fully satisfy the concerns which you and your Committee have expressed.

Sincerely,

Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

July 21, 1983

The Honorable William French Smith
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

As you know, the House Committee on the Judiciary, at the request of several other House Committees, has been conducting a review of the Department of Justice's role in the controversy concerning the Environmental Protection Agency and former EPA Administrator Burford's contempt citation. In the course of this review, the Department has made available to the Judiciary Committee staff a substantial number of documents that relate to these matters. I appreciate your cooperation in providing this access to the Department's files.

The Committeee now believes it is necessary that it be provided with copies of some of the documents the staff has already reviewed at the Department. Attached to this letter is a list of the documents the Committee requires, with a precise description of each document and a notation as to where it is located. Should the Department have difficulty identifying or locating any documents on this list, the Committee staff is available to assist your staff in any way you might find helpful.

In addition to the specific documents on the attached list, the Committee would also appreciate your providing copies of several categories of public documents as follows: (1) a complete set of all filings in the Department's civil action against the House of Representatives; (2) all correspondence between the Department and Committees or Members of Congress concerning the EPA controversy; (3) all Department press releases concerning the EPA controversy; and (4) all documents concerning the EPA controversy in the possession of the Department prepared for distribution among the public or the press.

Once again, I thank you for your continuing cooperation.

With warm regards.

Sincerely,

Peter W Rodino

PETER W. RODINO, JR.
Chairman

PWR:jcl

LAND AND NATURAL RESOURCES DIVISION

Type of Document	Date	From*	To	Title (if any)
Memoranda (three)	1/3/83 1/5/83 1/7/83	Olson	McGrath	Motion for SJ: Gorsuch Exec. Privilege Lit.
Memorandum**	2/7/83	Gailis	Staff Working Group	US v. House: Issues and Options
Memoranda**	2/8/83 2/9/83 2/10/83	Gailis?	Staff Working Group	Gorsuch Subpoena--Options for Negotiating with Congress
Memorandum	undated	anonymous		Points made by Perry re: DOJ at 3/7 Dingell hearing
Memorandum	undated	?	Atty Genl	Options for Protecting Ms. Gorsuch
Memorandum	1/26/83	Dinkins	Lee, McGrath Olson, McConnell	USA & Gorsuch v. House
Memorandum	2/7/83	Walden	Working Group	Memo to W.G.
Handwritten Notes--yellow sheets	12/8/82 12/9/82 12/13/82	Ramsey, Walker, Dinkins		Document review notes
Memorandum	1/9/83	Sniff	Regional Counsels - EPA	
Memorandum	3/9/83	Ramsey	Hauser	
Letter	2/3/83	Dinkins	Perry	
Memorandum	2/22/83	Perry	EPA Employees	

*The Committee staff has indicated the individual believed to be the author of each document. In cases where the identity of the author is uncertain, a question mark follows the name.

**Please provide all drafts and final copies from all Land and Natural Resources Division files.

Type of Document	Date	From	To	Title
Memoranda (two)	12/13/82 12/21/82	Perry	Managers	Procedures for Response to Cong. Requests for Enforcement Sensitive Materials
Memorandum	11/24/82	Perry	Regional Administrators	
Memorandum	3/9/83	Gailis	Dinkins	Congressional Requests for Interviews
Memorandum	3/3/83	Ramsey	Attys-EES	
Memorandum	3/1/83	Perry	Dinkins	
Memorandum	2/18/83	Gorsuch	EPA Employees	
Memorandum	2/8/83	Dinkins	Staff	
Memoranda (two)	1/28/83 2/2/83	Perry	EPA Employees	
Draft Letters**	1/26/83	Perry	Dingell	
Memorandum	11/3/82	Spears	Dinkins	
Memorandum	11/3/82	Olson	McConnell	
Memorandum	10/25/82	Olson	President	
Memoranda (two)	12/21/82	Lavelle	Hederman, Skinner, Lucero, Wood	Policy Guidance for Enforcement Sensitive Materials
		Lavelle	Regional Administrators	" "
Memorandum	1/13/83	Hauser	Perry	
Draft Instructions	12/8/82	?	EPA Personnel	
Draft	1/31/83	?		Draft Land position on Dingell request for interviews
Memorandum	3/1/83	Perry	Oswer	Procedures for Protecting Enf. Sensitive Docs.

Type of Document	Date	From	To	Title
Memorandum	2/8/83	Kaplan	Dinkins?	
Memorandum	11/22/82	Perry	"The Administrator"	
Memorandum	10/5/82	Regnery	Walker	
Memorandum	9/15/82	Mays	Perry, Brown	
Letter	3/2/83	Perry	Dinkins	
Memorandum	1/28/83	Perry	Ropes & Gray	
Letter w/ attachments	2/25/83	Burford	Schmults	
Memorandum	3/8/83	Dinkins	Jensen?	
Memorandum	3/1/83	Kaplan	Ramsey	
Letter	2/15/83	Fielding	Atty Genl	

CIVIL DIVISION

Type of Document	Date	From*	To	Title (if any)
Handwritten Notes	2/4/83	Wise?		AAG Meeting
Letter/Memo	12/12/75 or 12/9/75	Cutler	Scalia	
Memorandum	3/16/82	Miller, Rotenberg	Olson	Legal Issues re: possible contempt against Watt
Memorandum	1/16/81	Harmon	Atty Genl	Suing to enjoin enforcement of of Senate Committee subpoenas
Draft response** to 2/24/83 Judiciary Committee Letter	3/6/83	McConnell	Rodino	
Letter	12/23/82	Yamada	Perry	
Routing Slip w/draft letter from US Atty to Speaker	12/23/82	Willard	McGrath	
Letters (two)	1/6/83 1/5/83	Perry	McGrath	re: Summary Judgment Motion
Letter	1/19/83	Perry	McGrath	
Newspaper** article w/handwritten notes	2/2/83	Baltimore Sun		O'Neill spurned offer of private talks on Gorsuch
Memorandum forwarding draft	3/4/83	McGrath	Olson	
Routing Slip	12/23/82	Olson	McGrath	
Memorandum	2/8/82	Olson?	Atty Genl	Confidentiality of Atty Genl's Communications in Counseling Pres.

*The Committee staff has indicated the individual believed to be the author of each document. In cases where the identity of the author is uncertain, a question mark follows the name.

**Please provide all drafts and final copies from all Civil Division files.

CD -- 2

Type of Document	Date	From	To	Title
Memorandum	11/80	Daniel	Civ. Div. Attorneys	
Draft Response for Civil Division to 2/24/83 Judiciary Committee Letter	undated	anonymous		
Memorandum	12/20/82	Olson	McGrath	
Letter	12/29/82	Yamada	McGrath	
Master Draft of Summary Judgment motion	1/7/83			
Memorandum	2/4/83	Saundra	"Mr. McGrath"	
Memorandum	2/4/83	McGrath	Smith, Schmults, Olson, McConnell, Dinkins	
Memorandum	2/7/83	McConnell	McGrath	

OFFICE OF LEGISLATIVE AFFAIRS

Type of Document	Date	From*	To	Title (if any)
Handwritten notes	2/7/83	McConnell?		Gorsuch Meeting in A.M. w/AG re:options
Handwritten notes	3/8/83?	McConnell?		Meeting w/AG
Memorandum	3/11/83	Walden	Dolan	
Draft Letter**		Bator	Frank	
Memorandum**	2/22/83?	Olson?	Atty Genl?	Unfinished Exec. Privilege Business
Note	3/11/83	?	McConnell	
Handwritten note (attached to options paper)	2/10/83	McConnell?		

*The Committee Staff has indicated the individual believed to be the author of each document. In cases where the identity of the author is uncertain, a question follows the name.

**Please provide all drafts and final copies from all OLA files.

DEPUTY ATTORNEY GENERAL

Type of Document	Date	From	To	Title (if any)
Memorandum	3/21/83	Olson	Morning Meeting Group	
Handout(?)	undated	anonymous		Congressional Access to Law Enforcement Files
Memorandum w/attachment	1/19/83	Starr	Atty Genl	
Memorandum w/attachment	3/25/83	Schmults	Jensen	
Memorandum	2/17/83	Fielding	Keeney	

OFFICE OF PUBLIC AFFAIRS

Type of Document	Date	From*	To	Title (if any)
Memorandum	2/22/83?	Olson?	Atty Genl?	Unfinished Exec Privilege Susn.
Handwritten notes	11/24/82	Brill?		
Handout(?)	11/30/82			8 reasons why Executive's ability to enforce law compromised if law enforcement files released to Congress
Memorandum** w/handwritten notes	3/8/83	Brill	DeCair, Starr	Stuart Taylor

---

*The Committee staff has indicated the individual believed to be the author of the document. In cases where the identity of the author is uncertain, a question mark follows the name.

**Please provide all drafts and final copies from all OPA files.

OFFICE OF LEGAL COUNSEL

Type of Document	Date	From*	To	Title (if any)
Memorandum	4/19/73	Dept of Justice		Power of Cong. Committees to Compel Appearance or Testimony of Pres. Assists.
Routing slip memo w/draft letter from Atty Genl to Chairman Howard & Speaker O'Neill	2/22/83	Olson	Simms	
Draft Memorandum	undated	Olson? [Simms]	Atty Genl [Olson]	Recommended Course of Action in wake of Dismissal of US v. House
Memorandum	12/14/82	Olson	Atty Genl	
Draft response** to 2/24/83 Judiciary Committee Letter	undated			
House Motion to** Dismiss				
Draft legislation	12/7/82?	Malson?		
Draft Statute	undated	Malson?		
Letters (two)	3/7/62 4/2/65	Kennedy Johnson	Moss	
Letter	12/10/82	Perry	Dingell	
Routing & Transmittal Slip	1/12/83	Malson	Simms	
Draft Letter	undated	Perry	Barrett	Response to Barrett letter of 12/27/82

*The Committee staff has indicated the individual believed to be the author of each document. In cases where the identity of the author is uncertain, a question mark follows the name.

**Please provide all drafts and final copies from all OLC files.

OLC — 2

Type of Document	Date	From*	To	Title (if any)
Routing & Transmittal Slip	1/19/83	Olson	Malson	
Chronology		Dolan?		Chronology of significant events
Memorandum	3/5/83	Olson	Schmults	
Draft Memo	12/23/82	Perry	Gorsuch	
Memorandum (handwritten)	3/3/83	illegible	Dinkins	
Routing & Transmittal Slip	2/10/83	Simms	Olson	
Memorandum	1/21/83	McGrath	Starr	
Newspaper** Article (Wall St. Journal) w/handwritten notes	2/28/83			White House Official Asks EPA to Fire Burford's Chief
Memorandum	12/6/82	Olson	McConnell	
Transcript	3/10/83			Hearing, Subc. on Monopolies & Commercial Law, House Judicy Comm, OLC Oversight

ATTORNEY GENERAL

Type of Document	Date	From	To	Title (if any)
Routing & Transmittal Slip attaching memo	3/1/83	Olson	Starr	

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 10 1983

Honorable Peter W. Rodino
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In partial response to your letter of July 21st, I have attached copies of the following categories of documents:

1. a complete set of all filings in the civil action against the House of Representatives;
2. correspondence between the Department and committees or members of Congress concerning the recent EPA controversy;
3. all Department press releases concerning the EPA controversy; and
4. all documents concerning the EPA controversy in the possession of the Department prepared for distribution among the public or the press.

Sincerely,

Michael W. Dolan

for Robert A. McConnell
Assistant Attorney General

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General
Washington, D.C. 20530

May 18, 1984

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary .
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to our discussion at our May 4th meeting, your staff has reviewed the documents requested by your July 21, 1983 letter and has eliminated some of them from the list of documents requested. We have reviewed the remaining list of requested documents and enclose herewith copies of the documents described on the attached schedule.

The distinctive nature of the Congressional inquiry into the Department of Justice role in the controversy concerning the Environmental Protection Agency and former EPA Administrator Burford's contempt citation, the Executive Branch's expressed wish to be helpful to that inquiry, and the Department's special relationship to your Committee have led us to conclude that we should make an exception in this situation to our historical principle of not disclosing outside the Department the contents of internal deliberative predecisional memoranda.

As you know, the Department has always believed keenly that the Attorney General and his key high level officials within the Department must have the benefit of the most candid, forceful and robust internal advice in their decision making processes. Sound decisions on difficult legal and policy questions require a full and uninhibited ventilation of all sides of the issue before a decision is made. It is axiomatic that those who expect disclosure of their views, opinions and deliberations will be reluctant to express them or will express them in words, phrases or tone with an eye toward subsequent disclosure. To the extent that the Department's efforts involve legal advice to the President, we feel particularly strong about our ability to engage in candid deliberations.

Notwithstanding these considerations in this particular instance, for the peculiar reasons prevailing here, we are supplying the Committee with copies of any requested document that represents a completed work product, be it an official letter, a signed note, or an internal deliberative memorandum. We are not enclosing, however, copies of documents that represent inchoate or incomplete thoughts, decisions, or advice. We hope that you will agree that these types of documents -- such as drafts, marginal notations, and handwritten personal notes which represent tenative, preliminary or half-articulated thoughts -- should not be made subject to disclosure absent, of course, a showing that they represent evidence of wrongdoing or improper conduct.

As for the interviews that have been requested by your staff, we are willing to make the Department's policy people (Deputy Assistant Attorney General level and higher) available for unrestricted interviews. We presume that they will be able fully to explain the chronology of the events involved in this episode. If not, we should discuss how best to respond to any remaining unanswered questions.

I understand that Committee staff has also raised the question of the circumstances under which the staff can interview White House officials in connection with their inquiry. As this was not discussed at our May 4th meeting, perhaps we should meet again to consider this as well as the procedures described briefly above which we believe can be used to accommodate the Department's concerns and yet make available the information needed by the Committee to discharge its duties.

Sincerely,

D. Lowell Jensen
Acting Deputy Attorney General

DOCUMENTS RELEASED TO THE HOUSE JUDICIARY COMMITTEE
MAY 18, 1984

LAND AND NATURAL RESOURCES DIVISION

TYPE OF DOCUMENT	DATE	FROM	TO	TITLE
Memoranda (three)	1/3/83 1/5/83 1/7/83	Olson	McGrath	Motion for SJ: Gorsuch Exec. Privilege Lit.
Memorandum	1/26/83	Dinkins	Lee, McGrath Olson, McConnell	USA & Gorsuch v. House
Memorandum	3/9/83	Ramsey	Hauser	"Document Review"
Memorandum	2/22/83	Perry	EPA Employees	"Testimony re: Enforcement Sensitive documents"
Memorandum	3/9/83	Gailis	Dinkins	Congressional Request for interviews
Memorandum	3/3/83	Ramsey	Attys-EES	"Review of Subpoenaed Documents"
Letter	3/1/83	Perry	Dinkins	
Memorandum	2/8/83	Dinkins	Staff	"Reviewing Enforcement Sensitive Documents Subpoenaed from EPA by Congressional Committees"
Memoranda (two)	1/28/83 2/2/83	Perry	EPA Employees	"Congressional Request for Interviews"
Memorandum	11/3/82	Spears	Dinkins	Attaching 11/3/82 memo from Olson to McConnell transmitting draft ltr from McConnell to Dingell.
Memorandum	1/13/83	Hauser	Perry	"Question by House Subcommittee on Oversight & Investigations on Executive Privilege"

LANDS DIVISION CONT.

TYPE OF DOCUMENT	DATE	FROM	TO	TITLE
Memorandum	3/1/83	Perry	OWSER	Procedures for Redacting Enf. Sensitive Docs.
Memorandum	2/8/83	Kaplan	Gailis	"Redaction of Subpoenaed Documents"
Memorandum	11/22/82	Perry	"The Administrator"	"Agency Contact with Representatives of Levitas Subc."
Memorandum	10/5/82	Regnery	Walker	"Subcommittee ... Requests for EPA Superfund Documents"
Memorandum	9/15/82	Mays	Perry, Brown	"Request of House Oversight Committee Staffer..."
Letter	3/2/83	Perry	Dinkins	
Letter	1/28/83	Perry	Ropes & Gray	
Memorandum	3/8/83	Dinkins	Jensen	"Referral of Material for EPA Investigation"
Memorandum	3/1/83	Kaplan	Ramsey	"Allegations being Looked at in Gorsuch matter"

CIVIL DIVISION

TYPE OF DOCUMENT	DATE	FROM	TO	TITLE
Letter/Memo	12/12/75 or 12/9/75	Cutler	Scalia	Availability of a Civil Forum to Challenge a Congressional Subpoena or contempt citation
Memorandum	3/16/82	Miller, Rotenberg	Olson	Legal Issues re: possible contempt against Watt

CIVIL DIVISION CONT.

TYPE OF DOCUMENT	DATE	FROM	TO	TITLE
Memorandum	1/16/81	Harmon	Atty Genl	Suing to enjoin enforcement of Senate Committee subpoenas
Letters (two)	1/6/83 1/5/83	Perry	McGrath	re: Summary Judgment Motion
Letter	1/18/83	Perry	McGrath	
Memorandum	2/8/82	Olson ?	Atty Genl	Confidentiality of Atty Genl's Communications in Counseling Pres.
Memorandum	11/80	Daniel	Civ. Div. Attorneys	"Asserting Claims of Official Government Privilege in Litigation"
Memorandum	12/20/82	Olson	McGrath	*U.S.* v. *House of Representatives*
Memoradum	2/4/83	Saundra	"Mr. McGrath"	
Memorandum	2/4/83	McGrath	Smith, Schmults, Olson, McConnell, Dinkins	"Gorsuch Matter"
Memorandum	2/7/83	McConnell	McGrath	"Gorsuch Matter"

OFFICE OF LEGISLATIVE AFFAIRS

TYPE OF DOCUMENT	DATE	FROM	TO	TITLE
Memorandum	3/11/83	Walden	Dolan	
Note	3/11/83	?	McConnell	

DEPUTY ATTORNEY GENERAL

TYPE OF DOCUMENT	DATE	FROM	TO	TITLE
Memorandum w/attachment	1/19/83	Starr	Atty Genl	Adamson-Bell Op Ed Piece
Memorandum w/attachment	3/25/83	Schmults	Jensen	"EPA" (attaching James to Gorsuch memo)
Memorandum	2/17/83	Fielding	Keeney	"EPA Investigation"

OFFICE OF LEGAL COUNSEL

TYPE OF DOCUMENT	DATE	FROM	TO	TITLE
Memorandum	4/19/73	Dept of Justice		Power of Cong. Committees to Compel Appearance or Testimony of Pres. Assists.
House Motion to Dismiss				
Letters (two)	3/7/62 4/2/65	Kennedy Johnson	Moss	
Letter	12/10/82	Perry	Dingell	
Memorandum	3/5/83	Olson	Schmults	"With respect to questions which may arise..."
Memorandum	12/6/82	Olson	McConnell	"It is essential..."

NINETY-EIGHTH CONGRESS

PETER W. RODINO, JR. (N.J.), CHAIRMAN

JACK BROOKS, TEX.
ROBERT W. KASTENMEIER, WIS.
DON EDWARDS, CALIF.
JOHN CONYERS, JR., MICH.
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KY.
WILLIAM J. HUGHES, N.J.
SAM B. HALL, JR., TEX.
MIKE SYNAR, OKLA.
PATRICIA SCHROEDER, COLO.
DAN GLICKMAN, KANS.
BARNEY FRANK, MASS.
GEO. W. CROCKETT, JR., MICH.
CHARLES E. SCHUMER, N.Y.
BRUCE A. MORRISON, CONN.
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLA.
HOWARD L. BERMAN, CALIF.
FREDERICK C. BOUCHER, VA.

HAMILTON FISH, JR., N.Y.
CARLOS J. MOORHEAD, CALIF.
HENRY J. HYDE, ILL.
THOMAS N. KINDNESS, OHIO
HAROLD S. SAWYER, MICH.
DAN LUNGREN, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
BILL McCOLLUM, FLA.
E. CLAY SHAW, JR., FLA.
GEORGE W. GEKAS, PA.
MICHAEL DeWINE, OHIO

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

GENERAL COUNSEL
ALAN A. PARKER

STAFF DIRECTOR
GARNER J. CLINE

ASSOCIATE COUNSEL
ALAN F. COFFEY, JR.

May 24, 1984

The Honorable William French Smith
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I have just received the Department of Justice's letter dated May 18, 1984, which, while providing some documents, rejects the Committee's other requests for cooperation in its investigation of the Department's role in withholding Environmental Protection Agency Superfund documents from Congress in 1982-83. I must tell you that at this point of the investigation the Department's response is inadequate. The Committee has tried to conduct its investigation informally, out of the public view, and in a manner that would give the Department every opportunity to explain its role, while permitting the Committee to explore every facet of this episode. The Committee investigation thus far has raised potentially serious questions about misconduct, including the possibility of criminal offenses, by Department officials and employees. And unless the Department reconsiders its position, I seriously doubt that the Committee can complete its inquiry without public hearings and compulsory process.

Before turning to specific issues raised by the Department's letter, I remind you of a number of points that I and the Committee staff have emphasized repeatedly in correspondence, hearings, and conversations and meetings with Department officials:

1. The Committee on the Judiciary is conducting this inquiry at the request of a number of Committee Chairmen and individual Members of Congress. It will not be frustrated in carrying out its obligations to the House of Representatives.

2. The Committee has received complete, immediate, and unequivocal cooperation from all sources of information in Congress, including all relevant Committees and House offices and both majority and minority staff.

3. The Committee has received complete, immediate and unequivocal cooperation from the Environmental Protection Agency and all its current and former employees.

4. The Committee has received complete, immediate and unequivocal cooperation from former United States Attorney (now Federal District Judge) Stanley S. Harris and his staff.

5. The Committee has made every effort to minimize the burden on the Department and its officials. The Committee's requests for documents and interviews have been limited to information essential to the investigation.

Turning to specific problems that the Department's response presents:

1. The Committee has been told that some of the Department's files relevant to the inquiry have disappeared and may have been destroyed. The Department's May 18 response does not mention this problem. If documents have disappeared, the Committee expects the Department to advise it forthwith and to provide a list of missing documents.

2. The Department's response suggests that it has been unable to find some of the specific documents the Committee has requested. With respect to one document, the Department's liaison with the Committee told the staff that he had been assured the document did not exist. In response, the staff immediately produced a copy of the document obtained through other sources. The question naturally arises whether this incident is indicative of the thoroughness of the Department's document search.

3. Despite ironclad assurances given to the Committee that the staff was permitted to see all relevant documents (with explicit exceptions), during its review of Department files last Spring, the Committee has now been told that certain handwritten notes have not been made available. Again, the Department's May 18 letter does not discuss this deliberate withholding. I met with senior Department officials as recently as two weeks ago, and they gave no indication that all documents had not been produced. Indeed, the Department's explicit limitations, to which I

agreed, were particularly deceptive, because the clear implication by the Department was that everything else was being produced. We believe these documents to be essential to the completion of our investigation and we request their production once again.

4. The Department now refuses to produce for Members of Congress copies of documents that the Committee staff has already seen twice, most recently last week. It appears illogical to withhold from the Committee and its Members documents that the staff has already seen.

   The Department now refuses to produce copies of documents that are drafts or that contain marginal notations, on the ground that production would have a chilling effect on the decision-making processes of the Department. This argument fails for at least three reasons. First, the Department's processes and procedures are the very focus of the Committee inquiry, and access to these materials is imperative. Second, the fact that the staff has already seen these materials undercuts the contention that providing them to Members of Congress would somehow further chill the Department's decision-making processes. And finally, the attempt to distinguish between completed pre-decisional work product and preliminary pre-decisional work product is illogical; it suggests that the "completed work product" is not "the most candid, forceful and robust internal advice" that decision-making requires, and therefore is entitled to lesser protection.

5. The Department's position that the Committee cannot interview employees below the level of Deputy Assistant Attorney General again would obstruct the Committee's investigation. The Committee carefully selected and limited those to be interviewed. For example, one prospective interviewee wrote a memorandum outlining possibly criminal conduct by a superior during the EPA controversy. Another employee was a central figure in the controversy over political manipulation of Superfund settlements; yet this person participated in the review process through which documents were withheld from Committees of Congress and signed a

certification submitted to Congress that the documents withheld met the executive-privilege criteria the President outlined. The Committee has also been told that one prospective interviewee may have criticized or threatened EPA employees for taking notes on political discussions regarding Superfund sites. Further, a document in the files of another prospective interviewee suggests that the Department contemplated leaking or did leak what it considered derogatory information about the Chairman of a Standing Committee of Congress. Still another prospective interviewee prepared documents that cast doubt on the truth of statements by a senior official of the Department in testimony before the Judiciary Committee. Finally, the Department refuses to let the Committee interview two persons who were employed by EPA, not by the Department, at the time of the controversy, even though EPA has fully cooperated with the Committee. I cannot understand why the Department has apparently let other Committees interview some of the very same employees from whom we seek information and is refusing us the same courtesy.

6. The Department's May 18 response does not even address Committee access to the logs and calendars of senior officials. The Committee has collected similar documents from the EPA that have been extremely useful in reconstructing events that took place more than a year ago. There is no conceivable privilege that could attach to these documents, and they must be produced.

7. The Department now belatedly wants to discuss Committee access to information in the possession of the Office of White House Counsel. As I have repeatedly stressed, the Committee does not seek internal White House communications or communications with the President, but rather information on the relationship of the EPA, the Department of Justice, and the White House. The Department has represented that it has authority to negotiate for the White House, but it has been unable to produce a response to the Committee's request for information for nearly one year. In light of this, the Committee will in the future deal directly with the White House Counsel's office.

There is one final point that I must raise with you. I advised Department officials in a meeting on May 4, 1984, that there are significant questions about the testimony of Assistant Attorney General Olson before the Committee on March 10, 1983. Moreover, Mr. Olson apparently played a key part in the withholding of documents from Congress--including signing the relevant certification--and the events that are the subject of the Committee's inquiry. I now understand that Mr. Olson helped prepare the Department's letter of May 18, 1984. If this is so, the Committee should be advised forthwith. Any role Mr. Olson might play in decisions denying Congress information on matters that are the subject of the Committee's investigation only serves to raise further questions about the Department's position.

Inasmuch as we would like to conclude our investigation as soon as possible, I would request a response as expeditiously as possible. Thank you for your consideration in this important matter.

SINCERELY,

Peter W. Rodino

PETER W. RODINO, JR.
Chairman

PWR:jcl

Office of the Attorney General
Washington, D.C. 20530

June 7, 1984

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing concerning your May 24 letter to me. I was quite surprised by its tone since the letter to which you were responding -- Lowell Jensen's May 18 letter -- was cooperative in fact and spirit. Indeed, while your letter states that the Department "rejects the Committee's other requests for cooperation," Mr. Jensen's letter did not reject a single committee request. Instead, he merely asked the Committee to work with us to allow you access to what you need to fulfill your responsibilities while recognizing that the Department also has legitimate concerns in this area. We certainly desire to be cooperative; we feel we have already cooperated to a great extent, and we intend to do everything within our power to accommodate your concerns in a spirit and in a manner consistent with our own responsibilities. I therefore urge you to reconsider Mr. Jensen's comments in the spirit in which they were intended.

One other aspect of your May 24 letter is of great concern to me. You state that your investigation concerning EPA Superfund documents has "raised potentially serious questions about misconduct, including the possibility of criminal offenses, by Department officials and employees." Elsewhere in the letter you obliquely question the propriety of one senior member of the Department continuing to exercise the responsibilities of his office concerning our response to your inquiries. Although these suggestions are quite serious, your letter fails to provide information from which one could even conjecture that misconduct, yet alone a criminal offense, has occurred involving anyone at the Department.

Will you please provide a clarification of your remarks concerning Department officials. If there are grounds to investigate, I want to do so immediately. If there is a sound basis for a Department official to recuse himself from the business of the Department, I am sure that all of us would want to act quickly to implement such a decision. Obviously, however, I do not intend to take any such action without a legitimate factual basis. I await your response.

Sincerely,

William French Smith
Attorney General

NINETY-EIGHTH CONGRESS

PETER W. RODINO, JR. (N.J.), CHAIRMAN

JACK BROOKS, TEX.
ROBERT W. KASTENMEIER, WIS.
DON EDWARDS, CALIF.
JOHN CONYERS, JR., MICH.
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KY.
WILLIAM J. HUGHES, N.J.
SAM B. HALL, JR., TEX.
MIKE SYNAR, OKLA.
PATRICIA SCHROEDER, COLO.
DAN GLICKMAN, KANS.
BARNEY FRANK, MASS.
GEORGE W. CROCKETT, JR., MICH.
CHARLES E. SCHUMER, N.Y.
BRUCE A. MORRISON, CONN.
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLA.
HOWARD L. BERMAN, CALIF.
FREDERICK C. BOUCHER, VA.

HAMILTON FISH, JR., N.Y.
CARLOS J. MOORHEAD, CALIF.
HENRY J. HYDE, ILL.
THOMAS N. KINDNESS, OHIO
HAROLD S. SAWYER, MICH.
DAN LUNGREN, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
BILL McCOLLUM, FLA.
E. CLAY SHAW, JR., FLA.
GEORGE W. GEKAS, PA.
MICHAEL DEWINE, OHIO

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

GENERAL COUNSEL:
ALAN A. PARKER

STAFF DIRECTOR:
GARNER J. CLINE

ASSOCIATE COUNSEL:
ALAN F. COFFEY, JR.

June 25, 1984

The Honorable William French Smith
Attorney General of the United States
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

Thank you for your letter of June 7, 1984, which I received at noon on Thursday, June 21, 1984.

I also met Thursday with Associate Attorney General Jensen and Assistant Attorney General McConnell. I discussed with them in detail the reasons for my letter and the major areas of the Committee's concern. I reiterated that under the circumstances it is imperative that all documents requested be made available to the Committee and all requested interviews be granted. Hopefully this can be accomplished as quickly as possible.

Sincerely yours,

Peter W. Rodino

PETER W. RODINO, JR.
Chairman

PWR:apm

BEST COPY AVAILABLE

NINETY-EIGHTH CONGRESS

PETER W. RODINO, JR. (N.J.), Chairman

JACK BROOKS, TEX.
ROBERT W. KASTENMEIER, WIS.
DON EDWARDS, CALIF.
JOHN CONYERS, JR., MICH.
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KY.
WILLIAM J. HUGHES, N.J.
SAM B. HALL, JR., TEX.
MIKE SYNAR, OKLA.
PATRICIA SCHROEDER, COLO.
DAN GLICKMAN, KANS.
BARNEY FRANK, MASS.
GEO. W. CROCKETT, JR., MICH.
CHARLES E. SCHUMER, N.Y.
BRUCE A. MORRISON, CONN.
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLA.
HOWARD L. BERMAN, CALIF.
FREDERICK C. BOUCHER, VA.

HAMILTON FISH, JR., N.Y.
CARLOS J. MOORHEAD, CALIF.
HENRY J. HYDE, ILL.
THOMAS N. KINDNESS, OHIO
HAROLD S. SAWYER, MICH.
DAN LUNGREN, CALIF.
F. JAMES SENSENBRENNER, JR., WIS.
BILL McCOLLUM, FLA.
E. CLAY SHAW, JR., FLA.
GEORGE W. GEKAS, PA.
MICHAEL DeWINE, OHIO

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

GENERAL COUNSEL:
ALAN A. PARKER

STAFF DIRECTOR:
GARNER J. CLINE

ASSOCIATE COUNSEL:
ALAN F. COFFEY, JR.

August 22, 1984

Honorable William French Smith
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

The Department of Justice recently turned over to the Judiciary Committee a large number of documents deliberately withheld from the Committee in the spring of 1983. These documents had been requested as part of our ongoing investigation of the Department's role in the claim of executive privilege involving Environmental Protection Agency documents in 1982-1983.

A review of the documents over the past several days would appear to raise questions about the Department's compliance with its obligation to provide evidence to a criminal defendant under Brady v. Maryland, 373 U.S. 83 (1963). I have enclosed copies of several documents (with the relevant portions highlighted) that suggest that Department officials may have considered opening a criminal investigation of former EPA Assistant Administrator Rita Lavelle last year as a means of blocking requested interviews of EPA employees by a Congressional subcommittee. I would note that Ms. Lavelle's motion for discovery in the perjury case against her, in addition to making a generalized Brady request, specifically asked for the production of materials relating to "...the decision to proceed with a prosecution of the defendant herein" and "..the decision to commence the grand jury investigation that led to the Indictment herein." I have also enclosed a copy of this discovery motion. So far as I am aware, none of the enclosed documents was produced in response to this motion.

Because the Committee does not expect to issue a report on its investigation until later this year, I feel compelled to contact you separately at this time so that the Department may consider any responsibilities it may have in this matter.

The basic facts surrounding these documents appear to be as follows: On January 14, 1983, at the beginning of the 98th Congress, Energy and Commerce Committee Chairman Dingell wrote EPA Administrator Gorsuch renewing his request for copies of documents withheld in the 97th Congress. On January 25, Chairman Dingell again wrote the Administrator requesting interviews with a number of EPA employees. The enclosed notes were evidently taken at meetings of Justice Department officials on January 27, and February 1, 3, 4, and 9, 1983, to discuss a response to the pending requests for interviews and documents. Some of the suggestions for opening an investigation of Ms. Lavelle seem to have come immediately after the interview request; others appear to have been made after the Criminal Division had initially declined to proceed on the basis of then existing evidence. After the discussions reflected in the enclosed notes, the Department did investigate, prosecute and obtain a conviction of Ms. Lavelle.

Although the Committee has not yet had the opportunity to interview the persons involved or to conclude its own investigation with regard to any causal link between these notes and the Lavelle prosecution, I call them to your attention now so that in the first instance the Department might have an opportunity to address the very substantial issues they would appear to involve.

Because I understand the oral argument in Ms. Lavelle's appeal of her conviction is scheduled for September 7, 1984, please advise me in writing no later than the close of business Friday, August 24, 1984, what action, if any, the Department plans to take with respect to this matter.

Sincerely,

Peter W. Rodino

PETER W. RODINO, JR.
Chairman

PWR:jsw

Gorsuch suit

MW? recd 7/31/84
fm DOJ
[illegible]

1/27 Mtg w/working group

EPA employees to be interviewed & bringing their notes

all such notes should either -

① been withheld & listed as such (in which case they don't bring them

or ② turned over (in which case they don't need to bring them)

Ted may want to send public integrity section over to EPA and not have us touch this because of potential wrong doing by Rita Lavelle

if Jensen was investigating Rita Lavelle, the EPA employees would not be available for interviews — Larry Simms thinks we should perhaps start such an investigation & then advise them DOJ investigating.

CED to call Civil — need higher level working person and prob. w/ investigation needed (?)

Call Hernandez

1/27 CED Tel Bob Perry

want to make sure no letter goes to Congress before we have gotten together

(EPA wants to send by noon)

BEST COPY AVAILABLE

1/27 "File Anne Gorsuch" Mike Dolan
x 4787
1603

9:00 am No investigation pending as EPA

Respond to both letters together

Levitas 1-25 letter — asks for a list
Our impression is that EPA has gone to sleep
Laurel says there are 17 new STR doc. that have not been reviewed
What advice re exec priv.
What advice to Rita

30 more doc relevant to Dingell doc
(Tc, B+F STR)
EPA wants to release all but some 30 of the newly discovered

Kathy should only bring those doc (notes, etc.) to House that no claim of exec priv has been or could be (in the case we haven't seen & reviewed it) made

11:00

OLC-Lands — it's past the pt of no investigation EPA on this
recd 7/31/84
[illegible]

(1) any doc subj to Levitas subpoena, ~~st~~ even

(2) any doc. relevant to Lavelle misconduct
turn them over to whom? Lowell Jensen Crim.
not Dingell

A decision has to be made soon about whether to let

If the matter is formally referred OPR then the Committee can't get even them and that would be our response to the 1-25 Dingell letter

7/31/84 from DGC Dingell

1/27/83 Ed Schmults, Jack Keeney Crim Div, Olson, McGrath
Simms, Walker, Dolan OCA, Laurie. OLC

Ed very bothered by whole thing –

Jan. 25, '83 Dingell letter

Need Fielding in this

EPA needs to decide what as an agency ~~for~~ from managmt standpoint.

Does Gorsuch want to let her people get pushed around on Hill

And who goes w/ them?

DGC

or what?

And then how do you go forward w/ Executive Privilege.

Simms Keeney Under normal business, Criminal Division would tell Cong to butt out, its a criminal investigatn.

Keeney - Dingell letter is very cagey.

→ Tell EPA don't answer letter.
until Criminal Divn contacts Dingell to get info on ~~criminal investigation~~ charges of criminal nature. They will investigation

Dingell will come back and say just unethical and that's why I want more info.

Then say to Dingell – need to defer Dingell's requ

Simms thinks IG legis history will show that Cong is getting into all this w/ career people.

1/27

recd 7/31/84
fm DOJ
Lange
MW?

Mtg w/ Deputy AG

Olson, Dinkins, McGrath, Jack Keeney (Crim.), Walker, Simms, Ramsey
Pyke, Mike Dolan.

- Working group established
- Cong Dingell's new demand for documents (1/14)
    narrow focus
    articulate basis for request
    excludes crim. matters

we expect to send letter back withholding docs. (hope to send out by 1/28)
+ newly discovered documents

- Dingell's investigation into EPA misconduct (1/25)

- Cong. Levitas request for list of w/held documents & other info.

we had recommended to EPA before their
obligat. died w/ 97th cong. but best to send him
a letter to that effect (sent over 12/23) — EPA
ignored it.

(Note also:)
Dingell wants DOE files - re price overcharges (ERA - Economic Energy
Regulatory Agency) - Dingell's letter to Hodel - very arrogant
OLC working w/ Terry Johnson re substance of request

CED & McGrath to meet w/ Gorsuch 1/31
Hernandez (acting) wants to respond to Dingell today / Perry
is holding him off
EPA staff attys concerned about interviews & requests for their notes

Other concerns: EPA believes this is aimed at Rita Lavelle
Rita rumored to be friend of Meese &
was on Gov. Reagan's staff
Some strong concerns she was involved in
Stringfellow — a case she's recused from

SR: Rita has been involved in Stringfellow
(1 briefing & 1 memo)
& she kept a file on the case
Dingell claims being manipulated for
political purposes — general concensus
is that this is Rita's general bent
& they may find the allegation's true
though not maybe w/t this case.

— What to do w/ Dingell's request for Interviews:

people he seeks: technical, program people
her 2 principal deputies: Hedeman &
Lucero & their staffs.
Sonia Crow & others — all Region 9 people

Perry wants to know what to tell the employees
being interviewed

Deputy thinks we may not be able to
mastermind this — criminal investigation takes
presedence but we must look out for
Exec. Priv. here — Ed thinks Fielding
should be involved to see how we can
preserve Ex Priv. in course of employees testifying

Anne Gorsuch must decide whether she wants
her people to go up there — & if so,
who goes with them.
Simms / OLA — would prefer Crim. Division to
take over & let Congress wait until
they complete their investigation
may get requests for immunity — Committee could
taint crim. investigation.

Ted : tell Committee "you've have allegations which may be of a crim. nature" — place for that is Crim. Divis. - ~~if~~ they'll be in touch w/you. If the information reveals basis for investigation - can do there (or at IG level

ok w/ McGrath { a Ask committee to defer its request for interviews.

but hard to say to Congress you can't talk to them about criminal investig.

Matt Novak - IG at EPA (not yet involved)
as to non-criminal matters - he should investig 1st

Jack Kerry - 1st go back to Dingell & ask for what Dingell has
then get together w/ EPA's IG
→ Gorsuch respond to 1/25 letter so indicatin (can't trade totally on credibility of EPA-IG)
that she'll have IG & DOJ crim. call them to look into.

→ letter answering 1/14 letter — OLC to work w/EPA on this
→ letter responding to 1/25 letter - OLC to do 1st draft

② 1981 Sonia Crow files
1981 Tar Creek files – a full box
Have we misrepresented these

Enforcement sensitivity review almost complete.
He & Mike Brown ironing out last decisions.
Will finish late this week.
Expect to have about 30 documents withheld
Apparently in all categories

Sonia Crow - RA - Region 9

Will turn over tomorrow all of the non-enforcement sensitive documents to Dingell + Levitas (?).

If want documents we need to go get them.

~~[illegible]~~

Laure
1/27/83 MW, Larry Simmons, Walden; Sims, Walden
Dolan

Perry -
1- letter aimed at Lavelle
May also want to hold 9 staffers in contempt.
Are no notes in 64 withheld documents. not true

Did we review these notes...
1" " withhold.
We only withheld 3 Stringfellow documents
no

Could there have been withheld.

2- No pending investigations that he is aware of.

{Yamada is still contact.
{Brief his secretary

Perry concerned that give ee's proper info
Letter giving info to ee's
- not too restrictive
- properly presents presidential directive
- can they procedurally claim privilege
- need prompt turnaround

Olson - opposed to SDR idea of doing our own review of documents. That is agency responsibility. Can't assume resp. for Lavelle. That's Gorsuch's responsibility.

Hernandez wants reply ASAP since thinks may begin interviews this afternoon.

Hadn't Perry promised would be IG investigation - Doesn't look like they have done anything.

If ee's withheld documents that should have been turned over they could be culpable.

to which

We should state in letter that are continuing to look for documents.

Hummerlee notes - we have claimed privilege on some. She shouldn't take that group to interview.
Does she know which ~~do~~ of her document were withheld. Were ID'd to committee.

Are there documents which should have been turned ove

Olson - thinks that Public Integrity Section may need to interview ee's.

She represented Aerojet. Said so at conf. hearing.

If given investigation would not be appropriate for committee to interview. SOP.
Can we follow SOP in this case

For new documents is clear technical contempt of supor

Levitas - withhold 23

Lavelle - not mentioned in Hughes + Summerlee notes.

SDR Is not OK for letter to go
or Stringfellow documents

Laurel -
She talked about transmittal letter w/ Leifer.

She went over changes w/ him. Asked him to give us copy before he did anything. Didn't know should it send to documents. Told him was OK.

Perry wants to send letter to ee's. Was cautioned that Perry should talk to Mary Walker.

1/27 Steve Leiffer

① Non-sensitive documents. They want to turn them over tonight.

Tomorrow will answer Jan 4 letters.

Carol said nothing was to go.

4 inch stacks of non-sensitive document wants to send tonight.

② Want to send interim ~~interim~~ letter to stod
Wants to do it immediately.
~~Bo~~ Dinkins + Laurel gave contradicto signals

Laurel — Olson says

2/1 Foolish, counterproductive & damaging to the Presidents case

per contrary to interests of President

Memo to ee's could have drafted to the subject itself & would have been no worse?

2/1 MW If Olson wants this said to EPA let him do so. Tone it down. Convey sense of

2/1 Laurel —
Ted wants this communicated in writing ASAP. to protect Dept.

Feilding in communication ~~in writing~~ w/ Perry.

"Memo could have been no worse if drafted by Committee itself."

① Strongly believe that investigation should be done by IG or AG.

② ~~Should neither~~
Prefer not interview ee's until ~~[illegible]~~ allegations investigated & resolved, either by prosecution or dismissal
developing for

③ Have told them what we thought.

2/1 - Won't send letter to ee's.

2/1 SDR - If say don't waive e p why not turn over all Stringfellow documents.

Lew Wise - what would happen.

2/1 SDR Keeney - call him re: ~~[illegible]~~ case on start own investig

2/1 Dolan - no real problems w/ letters

* Heidi Hughes has found documents.
* More in region per Mike.

? What are the dates on these.

2/1 CED, MRD

Perry — call

Civil litigation shouldn't be vehicle for response to Dingell. Are withholding because of privilege -

Perry will not send letter to Dingell.
Has had calls from White ~~House~~.
They will ~~meet w/ Gorsuch~~ try to get here to meet w/ Gorsuch
Perry will call Gorsuch at home + tell her he isn't sending letter.

Notes on 2-1-83 meeting

rec'd
7/21/84
for
DOJ
SW

1st working group meeting, w/ Carol Dinkins

A letter to Levitas will be sent stating that EPA does not consider the subpoena to be still in effect yet documents will continue to be reviewed and released to the Levitas subcom if found non-enforcement sensitive

Levitas' Jan. 25 has not yet been answered. Steve Leifer is drafting a respond.

Larry said the operating principle is that EPA-DOJ is treating the two subcommittees similarly. Carol agreed.

EPA's internal investigation of Rita Lavelle has not and will not be assigned to I.G., acc to Anne Gorsuch. Rather, Anne has designated S.O. wholly unconnected w/ Superfund (replacing her earlier designee Gerry Yamada) to conduct such an investigation. It is our understanding that EPA will not commence any investigation unless and until Congress gives it some facts to go on.

The interviews begin tomorrow at 9:30. At 3 pm Bob Perry gave the interviewees "written instructions" virtually identical to the draft letter we urged him not to distribute) and certain to be in the Post tomorrow! The instructions did not address the bringing of documents to the interviews, but did say an EPA staff lawyer will accompany the interviewee

Mary called Bob Perry in the middle of our meeting to suggest and direct Bob to give oral instructions at 5 pm to tomorrow's interviewees NOT to bring any documents or notes to the meeting.

We've already lost through the passage of time some ability to preserve exec priv. at these interviews. We should have insisted that a [illegible] be present. We are unsure whether interviewees will be under oath.

Bob has agreed that he will not send to Dingell any response to Jan. 25 letter until Gorsuch talks to Meese. Carol says she hopes that sticks.

vu. Keeney in the Crim. div. does not thinks allegation made agnst Rita are substantial enough to commence an investigation. Larry said that he will show Keeny a copy of Rita's testimony plus the Sth doc turned over to the com. w/ Rita's name on it, and new doc. #43 from IG to Rita dated Oct. 20, 1982, an audit report pertaining to Sth

OLC is preparing an opinion whether GSA went too far in setting up an indep. IG at EPA

Larry said it was essential that Civil div. understand the substance of the withheld documents. Not clear whether he was talking solely of 64 (Levitas) or the newer doc.'s w/held from Dingell, too

Next meeting Thurs. 10 a.m.

CCD Ware
MW Walden
Simmons Firestone
Dolan Pyfer
Kaplan

2/1 Coordination meeting

New Rita Lavelle document. IG report to her.

* (Circulate EES & Perry memos to WG.)

Levitas - ~~issue~~
Keep turning documents over even if doesn't review request.

Lawyer who does grants review in EPA will substitute for Yamada on ethics.

Gorsuch going to WH on issue of referral of charges to IG or AG

Keeney - ~~exit~~ not enough to do referral on own

Will be reporter at interviews - per MW.

Will we get copies of transcript.

* Should not take documents we haven't had chance to look at.

MW to call Brown to make it clear they are not to take any documents.

CD Doesn't think Gorsuch would reverse decision not to take documents. She agreed to it.

LS - get review of documents underway quickly. Thinks Civil Division litigator ought to be intimately familiar for documents & process. Same will be true of McGrath if get to merits.

Keep pressure on EPA to keep process going.
Need good coordination.

MD - Bob gave them written instructions
Told them to take notes but not enforcement sensitive ones.

Bob will tell them not to take any documents.

Should Keeney be shown Lavelle documents + asked whether this might be enough to initiate investigation.

Perry had conversations w/ Lavelle before Oct. 82 telling her must stay out.

Simms extremely concerned that ~~or~~ is series of documents which may show pattern w/ level. May be innocent, but shouldn't Keeney be briefed.
LS - will talk to Ted about this.

Will Gov. wait to conduct inquiry until Dingell sends info?

Is OLC opinion being drafted on GSA setting up ~~[illegible]~~ investigator in own control to derogation of IG.

Will this be under oath.

Thursday - 10:00 am

10/12 w/ [illegible]

Walden - Coke Cheney issue.
LS - doesn't think this was thoroughly enough investigated. Should be pursued further. Documents 33 - 34

Laurel
Dolan
Wise
Walden

Fireston
Kaplan

2/3 Working Group Meeting

① Should not take notes

② If do, should be reviewed first: At least by EP.
We should.

Wise - prefers to ~~[illegible]~~ review + let them take innocuous notes.

New rules on subpoenas. May have to have full committee

Dolan to check.
Full committee in existence only a week.

* Nancy - letter to Perry

* Weiss will get representation issue resolved

Civil Div. has represented people in informal interviews.

McGrath doesn't want Civil involved in reviews unless are part of litigation.

OLC position is that have legal obligation to turn over newly uncovered documents that were prior to Oct 21,82.
Civil troubled. Should it update brief for more than 64 documents.

* Levitas letter
to give me comments by 2:00 pm
Laurel to discuss.

* Should Keeney write + ask for transcripts.

— Don't want to be in position of stymying interviews if is real potential fed problem w/ Lavelle.

LP- Region 9 leaking to Hill.

~~[illegible]~~ Laurel ~~[illegible]~~ to

How involved should we be in advising Perry.

Keep Keeney abreast of everything we know
LP - thinks Ted was to turn documents over to Keeney.

No downside to turning over to Keeney.

* LP - to find out what Ted has done + to draft letter to Keeney.
We have independent obligation.

Documents already withheld. Review on monthly basis + turn over.

OLC - claims 194 + Sgt. at Arms unconstitutional applied to her when exerts ex. priv. on orders of Pres.
Mere assertion immunizes her from civil process. after contempt citation

* LP - draft review procedure + circulate to SDR, CED + MW.

3027

8/4/83 Mtg. — Wise, Walden, [illegible], Kaplan, Gailey
9:30 am — Halser, Simms, Dexter

recd from [illegible] 7/31/84 MK

After [illegible] reg'us
we'll to come up w/ reg'us options

① Cooke's letter – comments
Lund: make clear whether docs were looked at or not
will continue block. of docs
~~will continue to be cooperative [illegible]~~
Berg: re subp. being expressed – that language is fine
(general agreement)
Gailey: ~~Striking last~~ ¶ unchanged
Lund: in ¶ above should add that we will continue to review
docs previously w/h to see if any can be released
Gailey: being reviewed by staff level & senior

② [illegible] [illegible] to [illegible] [illegible] – [illegible] [illegible] of [illegible]
[illegible] of [illegible] & will be sent to DOJ

③ Perry letter
Lund. 1st ¶, 2nd sent. [illegible] – conf. should be [illegible] –
[illegible] so we are not [illegible] of confidentiality matter

④ Referral to [illegible]
Test has not talked to [illegible] – we should wait to see what effect of
Perry letter to Dingell

Interviews
Identifying issue – [illegible] question [illegible] –
should be [illegible] [illegible] takes it

BEST COPY AVAILABLE

(2)

4/1/83 mtg

AAG met yesterday - no final decision.
general consensus to pursue reg'n,
Dole - Bob, Russell(?), talked w Mike ~~Barrett~~
Admin has to come up w/ new sugg'n to resolve good faith but no less than Cmte would buy
AAG - that's what we should try to do
what should be done w/ Gorsuch - should she be prosecuted by USA & if not, should that be announced? ?
connected w/ appeal decision ~~[illegible]~~

Walden - [illegible] until appeals process has been [illegible]
~~[illegible]~~ question of Gorsuch won't be decided
Olney - I agree completely - Ted too, pressure from Gorsuch
if pressure from Gorsuch too great —
(1) either AG says he will not prosecute
(2) use lawsuit to make announcement re being [illegible]
of prosecution alive by putting [illegible] Al-
[illegible]'s feeling that forcing AG to disclose of prosecution
[illegible] matter of pros. discr. — worst thing - want to avoid —
(3) either appointment of special prosecutor
applicability of ~~192~~ 192 + 194 to this issue
Wording of Stan Harris' letter does not suggest any other possibilities than exercise of pros. discretion
For Special Pros. + G. Jury
House has to pass statute which Pres. may or may not veto
Having Sp. Pros + G J raises set of constit. problems
Appointment of Sp Pros - would place Gorsuch in posn she doesn't want to be in
Gorsuch - wants to make sure she's not pros. by Harris &
if pros. by SP. Pros - she wants guarantee of pardon.
[illegible] now
[illegible] working party w/ [illegible] on Monday. [illegible] she wants
option paper. - [illegible] other options

(C)

New negotiating strategy

Wise I want to go bring all AT&T files & see what we need

Simm. Our last offer would give entire direct access to docs, as they wanted some

X(2) Ted agreed to giving them access to docs unless
we went back to dist. ct. & said we would
show all docs to designated members of Cmte or staff
for limited purposes of ascertaining
(1) the process [illegible] [illegible]
(2) they entail no evidence of misconduct [illegible]
If they do not ct would put these members under
protective order.
It's the absence of our ability to go to ct when they leak
Oct - Dingell members saw 15-20 docs & there was
letter from Barrett saying they were viewing them
for specific purposes.

Wise But not under prot. order then. (Refers to [illegible] AT&T)

Simm. Haven't formal Prot. Order in connect w AT&T. We
can send back to dist ct, Cl of App. said get ct.
Created as a referee [illegible] ct.
[illegible] Congress in Dec. — have no more formal [illegible].
This option has not been raised in ltrs.

Wise You want to do it in context of ltrs?

Simm We feel we should offer compromise
short of lkng at docs for limited purposes under protection of Ct.

Wise [illegible] ltrs — [illegible] [illegible]

[illegible] [illegible] protective agreement? Contrast with ct app. [illegible]
[illegible] [illegible] [illegible] [illegible]

7/4/8 3 calls

Simms I think Cong. could try to reverse prot. Order which will irritate Judge Smith. Bad publicity be. terms of Nat. secur.: (not like Biggs)
our proposal - no access to docs, we will go thru very thorough review process, you will receive descriptions of WH docs).

Dolan How will this be similar to Nat. secur.

Simms Should step beyond Dow proposal

Dolan If we go w/ these 2 conditions
Aren't we foreclosing their ~~are~~ one legit. constit. function

Simms Make decision that ~~if~~ we're turning over docs containing ~~alleged~~ evidence of misconduct, we should be [illegible]
If we have investigation going, can get prot. order

Dolan Will argue they have the right to oversee Exec Branch activities to determine need for leg'n.

Simms You're it.

He (Counsel) 11/24 letter to Dingell - we had a compromise. (that comp.)

Simms No docs exceeding by Feldman in his possession. Dingell will be allowed to read them [illegible]

Dolan I'm afraid they'll [illegible] on Lewis to play [illegible] on Dingell.

Simms Once we're showing Lewis same docs Dingell wants, they
~~[illegible] to [illegible] prot. order~~ We could offer to show Dingell docs under same prot. order.

2/4/83 (5)

Wise How can we as phase schedule a similar matter then w/o Prot Order - we'd be forcing them to go to ct —

~~[illegible]~~

Message to Dingell of Lev. to ct accept
we have no objection to you coordinating w/ Dr Lev.
If you will come under the Protective Order

[illegible] What of all these [illegible] staff [illegible] to come under Prot Order.

Simons We should try to keep it limited — we have not discussed w/ H J.

[illegible] Can ct prot order extend to nonparties in suits?
The party is Hse/Rep.
Ct could reach these people —
Reference to AT&T

[illegible] comp — [illegible] [illegible] objection of AT

Dolan approach they would bring compromise.

Simons thinks [illegible] will accept & Dingell will not
→ [illegible]

[illegible] Can't enforce prot Order

Simons If other clients have been able to come in under Prot Order —
then they do have to explain to Smith why not.

Simons supports [illegible] of AT&T — sees no [illegible] perfect ex.

Wise This is no standard, to just [illegible] ct intervention
. This is devisiveness [illegible] not public interest.

Chairman [illegible] accepted

BEST COPY AVAILABLE

(6)

7/5/82

Crain If we should draft private letter to O'Neil w/ some kind of new overture to negotiating
We need to look at —
- fallback options on ~~[illegible]~~
- other options as well
- can we provide brief on each site. [illegible] does
(others have been made & rejected)

Dolan [illegible] to [illegible] - DOJ + [illegible] of [illegible]. Senate - Have to be - Careful on compromises

3rd option - stressing docs here under limitations

Then last offer was to have Senate, summit ~~[illegible]~~ members come [illegible] & take notes but not copy — 2 [illegible]
Rejected this in 12/9 McConnell letter - [illegible]
Then the response to our last offer was filing suit
Break it ~~sort~~ sight access v. descriptions

[illegible] We R offering sight access w/ ct order.
Is there anything else before you cross the line? (No)

[illegible] Consider [illegible] to go into [illegible] a neutral party

Dolan i.e. That's the Arthur Goldberg proposal
That seems a Watergate proposal

[illegible] Only good for evidence gathering

[illegible] That point [illegible] that reproposing [illegible] work
• [illegible] never accept [illegible]. Great [illegible].

If [illegible]

2/4/83 ①

[illegible] simply won't work – it's [illegible] need to look at it all

[illegible] '[illegible]' feel judge won't go for it.

Simmons doesn't see this as judicial intervention

Miller [illegible] appeal [illegible] [illegible] appeal, [illegible] by [illegible] d.c.t. (Smith has to accept it case back) along AII lines

~~No jud.~~
Simmons only possible [illegible] over 12/9 [illegible] + Curtis [illegible] to having it [illegible].

Wise You're saying no room for [illegible] besides this?

Simmons Not really. Can reoffer old prices.

Levin No right to access short of it order?

Wise [illegible] of thing come here + see if that [illegible] the waters?

List of ~~Curr~~ Compton's options

Dolan I don't think they'll make an offer – [illegible] on us

Simmons There is no counteroffer for them.

If Smith will not get involved in this – we have no regulatory option?

[illegible] Re: [illegible] what Smith does? They will [illegible] (They will [illegible] hopefully)

BEST COPY AVAILABLE

8

[illegible] If they turn it down — only thing left is lawsuit

Simms If Congr rejects offer, I think we'd go to Judge & say ~~they rejected [illegible]~~ they have rejected our offer & now we want you to do X.

[illegible] Congr - will go ahead w/ lawsuit or try to impeach Stu Harris (that's what they'll try to do — Pete)

Impasse - our offer rejected, Congr. ~~[illegible]~~ doing same thing - now we're back in ct.

Appealing case is an option - taking case as Smith left it w/ new fact that House has rejected our offer.

Greg. Smith's opinion - there is an extra criminal procedure and parties haven't negotiated.

✓ If you remove one grd (latter), ergo back to judge on 1st (crim. proc.).

Simms What is scope of review in DC Cir, in refusing to review (?) All we can appeal is what judge decided. Ct of appeals can review only what Smith decided.

Wise ct of appeals could (but very unlikely) find that Smith should have handled case [illegible] it back

Greg If DC Cir decided Smith was wrong on [illegible], they would decide all the jurisdictional issues

~~[illegible]~~ Lew: Found no standing. That's how ct of app will read it

Simms If we keep 2nd prong (reject) of Smith's opinion is Judge Smith more likely to decide jurisdiction in our favor or is it better to bring [illegible] ct of app —

⑨

2/4 mtg

~~Decision~~ decision not try to prosecute, if publicly stated, reckless of prosecution

Simon, Decision to ~~[illegible]~~ prosecute —

Constitutionally does House have to prosecute

Judge now forced to decide threshold issues

Judge has to decide if 192 & 194 constitutional

If he says yes — we are in same position where we have to proceed

he can jump to us

Lew . His opinion assumes we do not to have to prosecute

If we come back & say you're rt. . . .

Simons Our objectives — if AG can submit constitutionality of 192 & 194 to the cts — that's better than AG making decision

This isn't ~~some~~ advisory opinion

2 to similar of precedent. and

Similarity with Legislative Veto case

Dispute between the 2 Branches over Const.

This is before ~~[illegible]~~ House expects ~~[illegible]~~ prosecution to go forward

Nancy What are options for House if we do nothing?

Do they start impeachment?

If const., referral to g.j. mandatory.

Simons We'd like it if they bring mandamus action — cause const. issue have to be decided

Mary Negotiations will be key, but House Members have time for this. What will they get out of this by pushing it.

~~Simons However can they~~ Their objective is to force House to get to g.j., then House will get their deal

Simons

Dan They want us to force informally ~~House~~ House to not prosecute

BEST COPY AVAILABLE

(1c)

AG wants cts to decide [illegible]

(1) Negotiate

Dolan We have to appear to negotiate in good faith. Tremendous pressure for us to bail out - will come from Will, Hill, EPA etc.

Gray What if they buy sight-access under Exec. Order?
Dolan doesn't want House to accept it (Simms agrees).

Dolan Someone must decide we wanted judicial determination of exec. priv.

Corlis You feel compromise goes too far?

Dolan No, we should have done it initially & then we have wasted a lot of time

Lew Unlikely these issues will be decided in law suit

Dolan ~~the~~ Procedural problems - mandamus problem.

Simms If D firm subpoenas issued by Congress right it to enforce - new situation

Gray ~~Your going in B ct~~
Do we even want to give them direct access, given them precedent to come in under Exec Orders to look at open info [illegible]

Simms Case-by-case approval

Gray If they're going to be enforced [illegible], we should [illegible] of [illegible] to get off.

[illegible] [illegible]

(11)

2/1 mtg.

Dillon Idea of special statute to confer jurisdiction on ct.

Simms No chance Congr. would pass it.
jurisd. to entertain suit + give consent of [illegible]
to bring suit.

[illegible] Are there any other proposals for reg'n

Lew I want to get there. my AT+T files to see.
Before we would go + look at Prot Order if any.
Anderson — what Prot Order will look like.

Dillon - can do anything they want w/ it but not publicly

Have Lew will look at AT+T filing because look at opinions
+ then draft opinion based on AT+T

Will be concerned w/ special statute — but they
already know about it.

Unless [illegible] to announce not going to prosecute G.
(1) public [illegible] get to pros. because [illegible] case

can conditions in special statute on which [illegible] be applied here?
No — different circumstances.

Townsend pt — we have already got price [illegible] public rel'ns,
if we're going to give up, we should do it gracefully
Will compromise [illegible] thing

Lew Maybe we comment. that [illegible] part of [illegible] office.
([illegible] office [illegible] the [illegible])
[illegible]
[illegible] — Secret [illegible]

7/4/73 ⑫

If Pres Order acceptable to them, they will assist us in this

a 2nd option is 3 judge access w/ conditions

another is Cox's last offer

question on how much you can restrict their use.
Only way to restrict is say not for public

Gregg Dolan If they pick up Pres Order option where do we lose
only in public rel'ns sense (but we will too)

Mike O. to ~~think~~ think re. letter to O'Neil

Question of boycott
Simon - thinks we shouldn't talk about it - a political decision

could affect civil litigation - would need, meets of decision-maker at top [illegible]

presenting to GJ not an option very useful unconstitutional

~~Special Pros~~ ~~Ste~~ AG can't name Sp. Prosecutor,
could name Sp Counsel though - but wouldn't.

Civil Div has made decision of 1972 + 1974 are const.

→ [illegible] 1972 + 1974 constitutional

Title
Civil Div - opinion/[illegible] : Paul
Cox - Mich (Pres Order) option
[illegible]

February 4 Meeting of the Working Group February 7, 1983
Files Marty Kaplan
PLSL Section

recd 7/11/84 from DOJ mk

The meeting began at 9:30 a.m., present were Larry Simms, Michael Dolan, Gregg Waldon, Lew Wise, Barlow Malson, Ann Gailis, Nancy Firestone, and Marty Kaplan.

We first discussed the Levitis letter. Laural suggested we make clear whether the documents were to be looked at on site and we should make clear that we will continue to look at the documents. Everyone agreed that the subpoena language being expired was fine. Laural noted that in the paragraph above we should add that we will continue to review the documents previously withheld to see if any can be released and Ann Gailis suggest that we add that the review process included both staff level and senior people.

On the dioxin documents, these went to the Hill without our review, they were determined to be nonenforcement sensitive by EPA. However, two were Enforcement sensitive and will be sent to Justice.

On the Perry letter, OLC noted that we should review copies of the notes not the notes themselves because we do not want to be accused of confiscating notes.

On the referral to Jack Keeney, we should wait to see what was the effect of the Perry letter to Dingell.

Concerning the interviews of the EPA employees, Larry Simms felt an important issue on the debriefing was who did it. He felt it should be someone from Criminal Division.

The AAG's met yesterday but reached no final decision. There was a general consensus on pursuing negotiations. Michael Dolan said that Mcgrath had been on the Hill all day and had talked to Michael Barrett and that the Administration needed to come up with a new suggestion to show our good faith.

The discussion shifted to the present situation now that the civil suit has been dismissed. Civil Division said that Mcgrath wanted to let the appeals process run its course and not reach a formal decision on the question of the Gorsuch prosecution. Larry Simms said that if the pressure to announce was so great that they had to do something, either the Attorney General should say that he will not prosecute or somehow use the lawsuit to make the announcement or to keep the issue alive and this way you will put the heat on the court and not the Attorney General. OLC wants to avoid making the AG the person to decline to prosecute, the person to exercise this prosecutorial discretion because this would result in either an empeachment or a special prosecutor. There is a question of applicability of 2 U.S.C. 192-194 of this issue. Wording of Stan Harris letter does not suggest any other possibilities than to exercise prosecutorial discretion. The House for special prosecutor they would have to pass a statute which the President may or may not need to veto. Having a special prosecutor and a grand jury raise a constitutional problem. The appointment of special prosecutor would put Gorsuch in a position she does not want to be in; she wants to make sure she is not prosecuted and if prosecuted she wants a guarantee of a pardon in advance.

Discussion shifts to options paper and the development of a new strategy. Lew Wise referred to the AT&T case and said he would look through and see what we said then and what sort of offers we made.

OLC said that Ted Olson would be opposed to giving the Committee access to the documents unless it was done through the Disctrict Court under a protective order and then we would be saying that all these documents can be shown to designated members of the Committee or staff for the limited purposes of ascertaining that they are enforcement sensitive and that they contain no evidence of misconduct. Its the absence of our ability to punish them if they leaked the documents, that is troblesome. In October, the Dingell members saw 15-20 documents and in that case there was a letter from their counsel saying that they were viewing them for these specific purposes.

Discussion over whether AT&T involved a formal protective order or not. Unresolved. It was pointed out in that case that the Court acted as a referee and not as a Court. Larry Simms pointed out that we have to move from our position in November and this option has not been raised in litigation. There is no position short of looking at documents for limited purposes under the protection of the Court. Civil Division pointed out that we need to revive litigation. In that case, OLC felt that Congress would try to resist the protective order and discussion centered on what the results of that [illegible] maybe irritated cause he may be

One proposal was suggested no access to documents but we would go through a very through review process and Congress would receive descriptions. Those were the terms of out November position.

If we make the decision to turn over the documents containing evidence of misconduct, we should be the branch enforcing the law and if we have an investigation going, we can get a protective order going on the documents. OLA felt that Congress had the right to examine the Executive Branch of the materials to determine any need for legislation. (Agreement)

Reference is made to the Watt compromise. In that case, the documents were carried up to the Hill by Fred Fielding and in his presence Dingell and others were allowed to read them. There were no known restrictions. (General agreement that while Levitis would agree to a protective order, Dingell would not.)

Civil Division noted that if we do this, in any similiar situation we would have to negotiate a protective order once again. We are forcing them to go through litigation.

Dingell's Committee can come in on the protective order. OLA feels that Congress will buy the compromise. OLC feels that Levitis would accept it but Dingell would not. It was pointed out that if the Committee came in and saw the documents under the protective order, then they would not be able to quote from those documents. Therefore, if they already had copies of those documents and wanted to use them, they would not want to come in under the protective order. They would then have to explain to Judge Smith why not. It was suggested that Civil Division develop a chronology of the AT&T case. Civil Division felt that the Judge did not perceive judicial intervention and that we should try and find a negotiation position that does not require a court intervention. OLC said that Olson would not accept that. Ann Gailis said that we have also been asked to draft a private letter to Tip O'Neil with some kind of new overture for negotiations. We need to look at fall back options, other options available, possibility of providing briefing on each site. OLA pointed out that this a very important situation, both Justice and the President are out on a limb and we have to be very careful on our compromise.

There is a second option showing documents here at Justice under certain limitations. Their last offer was to have five aids and the Subcommittee members come here and review documents under Executive Session rules. They would take notes but not make copies. This was rejected in the December 9 McConnell letter. Their last response to our last offer was to file the suit. The break is between site access

In the discussion the group ... before you cross that line to access, but the general feeling is that there isn't any beyond the court order. ? was suggested -- references were made to the Arthur Goldberg proposal. Another option was segreating within the document but it was felt that it would not work and that the members would never accept the cuts. Additionally that would present a great burden. Random sampling wouldn't work, in its oversight function, the Committee needs to look at everything. Civil Division noted that we could file an appeal asking the court of appeals to remand the case back to the district court but than Schmidt would have to accept the case back. This would be along the AT&T lines.

Discussion returns again to whether there is a position between the December 9 position and the Committee position and it was again determined that the only feasible was to have the court involved. We could reoffer old positions but that was not very helpful. A suggestion was made that maybe they could come here and see the documents but could not make notes.

Discussion shifted to Congress' options. It was discussed that they would probably not make the first offer, that the burden was on us. It doesn't really matter what Judge Smith does, this would go forward in a letter to O'Neil and then hopefully would be turned down. If it is turned down, then the only thing left is a lawsuit. If Congress rejects the offer, we could go to Judge Smith and say, hey look they rejected this offer and now we want you to do something. We will be back in court. We could take the case to Smith with the new fact that the House rejected our offer and appeal it.

Judge Smith's opinion rested on two grounds -- that there is no established crimial procedure for this and that the parties haven't negotiated. If you remove the latter ground then we could go back to the judge on the first. I pointed out that all we could appeal was what the judge has decided. The Court of Appeals could review only what was decided. It would be very unlikely that the court would remand it back to Smith. The circuit could very well decide all the jurisdictional issues.

On the decision to prosecute, the question is constitutionally does Harris have to prosecute. The judge has to decide if sections 192-194 are constitutional. OLC feels that if the courts can decide the constitutionality of 192-194, that's much better than the Attorney General making that decision. This would also not force the Attorney General to use his prosecutorial discretion in the matter. Comparison with other legislative veto cases where there is a dispute between the two branches over the constitutional issues. If we do not do [illegible] options available to the House are impeachment, [illegible]

It was pointed out that initially a decision was made that we did want a judicial determination on Executive Privilege. Unfortunately, these issues will not be decided in this lawsuit. A question on what would happen if two fresh subpoenas were issued by Congress. If we do have a protective order, this will not set up a dangerous precedent because these things are decided on a case-by-case approach.

Discussion shifted to the idea of a special statute to confer jurisdiction on the court. It was thought that Congress would not pass it.

I pointed out that a public announcement not to prosecute Gorsuch moots the case. It was decided that the intelligence statutes were different circumstances and not useful to us.

OLA pointed out that we have already paid the prices as far as public relations go and if we are going to give up the documents we should do so gracefully.

Civil Division pointed out that we could actually make this all part of our offer. Whoever does turn down the offer will be the loser. Whoever turns down the first offer will be the loser. If we both do go to court, both Congress and the Executive Branch, the Judge would be turning down both branches. We could make a joint motion. Each branch could say they were assisted by the other branch.

Other options are site access with specific conditions, the Committee's last offer. The only way to really restrict Committee use is to say that they cannot go public. The Attorney General could not name a special prosecutor although he could name a special counsel but there is no reason to.

Assignments: Civil Division is to look into litigation options, if negotiations fail; OLC will draft the negotiation options; and Michael Dolan will start thinking about a letter to Tip O'Neil.

Meeting ended at 12:00.

back
2/9 Leifer + Laurel — Levitas letter
Changes p.1 – staff + senior level
p.2 – ¶1 – Laurel's changes
¶2 – OK

#

~~to~~
#

2/9 Leifer TF

Told him was OK to take out estimate on p.2 since is repetitive of p.1.

#

2/9 Yamada TT

will review memo + ~~[illegible]~~ call.

Leifer TT
of docs he sent over
Last batch in Barbara Grim
Program files

2/9 CED, SDR 7:30
Kenney - will start invest. on conflict of interest in SF
Not interested in other charges. Not fair to these people to initiate crim. invest. on such sparse allegations.

AG - 10:00 am
Then Fielding in afternoon.

Friday - neg. team to Hill.

* ~~AG~~ — Put on Agenda for AG to invite someone from EPA. to WH.

7/21/82 DOJ for CED

Working Group: MLW, Dolan, Ramsey, Lew Wein, Laurie

Dolan - are we turning over potential investigative material to Subcommittee. Ans: We aren't sure what EPA has turned over. May have been leaked out of Reg II. Should we talk to Henry.

Crow/Daniel : Political

→ Any settlement should go thru Criminal the proposals.

Lew: If put under protective court order, then only good for this particular case. Levitas can't bind Dingell

Don't make a long range precedent

Civil Proposal No court protection (would be nice)

1) View at EPA [illegible] (Reg & HQ) They segregate subpoena the Enf. Sensitive Documents
Real admin problem to redact hundreds of documents.

~~Chrmn & Ranking Member~~

2) Limited number people
3) If notes, stay in EPA possession or we review before are carried away.
4) Assurances: If House reneges, no further oblig. to do: No disclosure.
5) If want copy of document, must subpoena w/ specific reasons & if we refuse, must sue in court to get it. Not go thru again Contempt

Dolan - we can't assume they have a right to view documents where potential criminal conduct.

BEST COPY AVAILABLE

Ramsey LNRD

① (R) Don't let them see enf. sens. documents
They choose # sites (20 total at their choice)
Give files (redact enf. sens.)
Provide detailed (summaries) of redacted portions
Offer to make available Exec. Session or public
both policy level and career people to
discuss or testify re general approach to
enforcement and spending money.
Continue to review and release as not enf. sens.

② Would agree under court protection.

Walker: (LNRD)
If have documents where all redacted, not feasible
w/ oral summary. They don't believe it.

Would let 2 people see documents
} no notes
} assurances no disclosure
} scope why see redacted portions

Tracy: Can't draw line w/o looking at what ultimately may happen (Impeachment)
But you can't limit their use except for specifics

?!

Must articulate what their oversight function is,
and what they need to see to perform it.

If they see just limited # sites / reviewers, have less trust

Dolan
Cong. won't buy this Ramsey proposal.
Thinks criminal stuff overshadows all.
Wouldn't back down.
Could go along w/ Steve.
Likes court order even more.

Laurel

Ramsey's comes closer – She thinks meets their needs.
No documents

Lou: could be just as hard to enforce court order as agreement. They'd scream speech or debate clause. Superficially is attractive / Is it meaningful.

ATT – Sight access to random sample.

Dolan: There's a DoJ policy – career people not be called upon to justify their recommendations.

1/7/83 Then McConnell, McGrath & Olson & CEO

McC reminded us concern for Crim Div.

Olson would send all GV documents + news clips + Dingell's letters to Crim Div

McC: As principle, difficult to back away from keeping docume
Can't rig. our way out w/o some viewing.
But once they are, no longer under our control.

Olson In extraordinary circumstance
1. Go to Judy, if the says are evil. If misconduct, wrongdoing, then we won't obj to release
McG: That's advisory
[illegible]

2. Say take these. Keep confidential
but next time w/ assert exec priv
you agree to take it to court if we refuse to give documents.

Always keep in mind we have some wins ready

! State not suggesting how Ed negotiate this:

1. Agreed to Ramsey's bottom line
2. Court order -
    we are on offensive
    Less offensive than their unilateral review
    They won't want to appeal

Olson won't Do THIS

3. Letting Congress view – Olson doesn't like it.

Limit to smallest # possible (O: All members)
- NO staff - Olson
McConnell

10 am
AG

McG: we veto staff

McC wouldn't let Chief Counsel or 1 or 2
McC doesn't trust Chief C

If they say wrongdoing, will give them.

McC
McG
O
D
No notes

Subpoena & Due -
→ Not McG bottom line
Olson agrees

McG: Neg. re SF

Ed Schmults

Give them documents which may indicate corrup
Redacted versions where still make sense
Maybe / not summaries of [illegible]
Levitas / Snyder only review unredacted documents.
Maybe procedure when they go to court if they disagree over document

[illegible] list of all Corresp. (etc)

Hours
Oeagle
No enforcement

How great redaction on how many
How many SF?
How many sites (5)? How many documents total are EJ.

Doc #3

2/9/83

Delain - If docs contain evid. of crimes, should be no release to Committee before Cr. Div. does anything - involve Criminal division

Lands - Comm can choose 20-30 sites - they get redacted docs + detailed summaries - Exec Session - some career management type would then testify about enforcement strategies, etc

Ct. order - AT&T

Rec'd 7/31/84
from DOJ
LW

Lands is ~~letting EPA to send docs~~ getting ~~[illegible]~~ its attys involved in initial screening of docs related to any of the sites involved in DOJ suits –

Dolan suggested that Counsel should get involved –

next mtg

Thurs 10AM 2/10/83

Rec'd 7/31/84 from DOJ

LW

/ 2/9 mtg — CEM, MCW, SDR, APG, Laurie,
11am Mike, MK, Lew, Greg.

1. acceptable options
2. should we rec all Stringfellow be released cuz of Dingell + press (Lavelle)
3. 2/8/83 Dingell letter

Options for
1. provide redacted copies
possibility — some docs are no longer sensitive

—

is there way Ch + ranking Min member (or some cmte)
Who could look at redacted parts

2. Cmte look at docs → exec s.
→ ct. order

Levitas request encompasses 160 sites — too much
must be limited —
possible — 20 sites (see paper)

Dolan: are we talking about possible criminal misconduct?
That's our normal sit'n
Criminal Div may be involved
Do we give Cmte potential g.j. material w/o Crim div. seeing it!
Jack Keeney should be involved!?

APG We aren't sure what EM's turned over. We haven't seen what they released.

SPR describes possible documentation for allegations
If you look at all docs in Stringfellow, 99 more innocuous
But there is stuff that can be picked on

4/7 am)

Dolan Any settlem. proposal should be reviewed by Crim. Div.

SDR House Strof. is being referred to DOJ

LCM Should there be court protection before we agree to release all docs
or is there some ~~stropp~~ strict control outside protection of ct we could agree to.

Lew: Paul wanted some sort of agreement agreeable to other Cmtes (e.g. Dingell). Ct order wouldn't do that.

Mike someone told McL. Speaker would not be party to negotiations

MCW Maybe we should say that goes ~~Maybe we couldn't we could~~ that we want to apply to House
~~Dont worr~~

CEP Dont know if we can do that ?

Greg Dont think ct order would go over w/ House.
But we still can put ct into whatever proposal we reach.
Option 2 variation
comes close to House prop.

Ann What prevents House from filing civil suit?

Greg The agreement would
~~Ct docs~~ +

SDR Too many docs to do it all in Hdqtrs. (700000 pages)
Only w/ sens. stuff goes to Hdqtrs

Lew But conditions only apply to w/ sens,
Redaction - admin problems of redacting all that - nightmare
~~Yet~~

2/9 ③

Civil/Div → not in favor of ct. order

Lew More limited # people, the more secure.

(Not under prot. order) –

Don't think ct order practical – House won't accept it

[illegible] (gov) Assurances – ① limited # people see them

② docs remain in our possession

③ any notes taken, if permitted, to be kept in our possession

or could allow notes but let us review them + not let out any sens. info.

④ if House reneges on agreement → breach

+ no further obligation

no public disclosure or to other Members

if breach – all bets off

⑤ if they want doc physical control of doc – must subpoena

2-step process

have to articulate their need for doc

if we disagree → they have to resubp. doc + file civil action.

Mike – Legitimate purpose → misconduct or criminal conduct – ones that create new problems for us They're different.

[illegible] Keeney policy ~~[illegible]~~ don't turn over evidence of ~~or~~ crim conduct

CDR 1 step short of letting them see docs

propose – allow them to choose certain # of sites (20)

one from each region + 10 of their choice

Make files available but redact cr/sens parts

+ provide detailed summaries of redacted portions.

They can keep redacted docs + we can offer

in exec session or public session policy level

~~5~~ (4) 2/9

DR — + in this instance career person w/ management resp (like SDR) to testify re gov't's general approach to enf or SF activity
This would provide Congress alot but keep docs from them.
Continuing review of enf sens docs & if no longer so → docs will be turned over
as files closed - everything would go.

I would agree to ct. protection.

MLW My only concern is if redacted portion essentially entire doc - They won't trust ~~in~~ our summary
— it is a sticky pt
I'm not in favor of having limited # people reviewing docs w/o notes - good memories

SED If they refuse SDR's suggestion would you let them look at docs w/ civil cond'ns?

MLW: Yes if I could get enough prot'n - doubt that's possible then
No notes, no copies, Ch. and one staffer only,
~~If want to d~~ to see if misconduct. for oversight function only

Greg. Dissemination of info could not be publicized in any manner — I forgot to add it

LEW Difference tween publicizing & using it generally

MLW Not very viable though

LEW Dont know how you can limit their use as long as they dont get specific

⑤

2/9

MCW Emphasize oversight function but say limited review is ^only way to accommodate our enf. processes.
How much do they need to fulfill resp.

SDR ① House would have to understand that of sites picked are in active litn — they have necessary ~~[illegible]~~ of litn come first
② I would release all Stringf. docs

MCW I have less trouble w/ redaction for 20 sites + limited access to unredacted portions than w/ 160 sites

[SDR would give them written summary of redacted portions]

Dolan, MCW feel they won't buy it.

Mike - Nervous about criminal allegations.
Special prosecutor may look more attractive.
~~[illegible]~~ Wouldn't back down.
Events of last few days mean they won't accept anything. ~~[illegible]~~ I could go along w/ Steve's proposal but they won't buy it.
I like Ct. order even better - gives it air of legitimacy + public would understand it better.

MCW How far are we willing to go on this?
I'll take a hard line but I'm a little nervous.

Greg Is redacting a negotiating stance - it seems like our civil litn posN.

~~SDR I respect you on good-faith effort. +~~

⑳ 71

cw But any ~~to~~ neg'd option that does not include sight access will fail

rej Instead of good faith, how about success.

awel: Fat ~~[illegible]~~ Release nothing is OLC's posn.

cw: Ct order – we'd have same problems trying to enforce ct order as in M of U. option — may even be more difficult - Speech or Deb ~~etc~~ relationships etc.
In AT+T case, ultimately permitted sight-access to – random sampling.

Mike Re career people, Dept policy that career people shouldn't be called upon to justify ~~their~~ their opinions or decisions. That has been waived in extraord. ~~[illegible]~~ circumstances + this is one. But we should be careful.

awel: Giving them redacted copies + talking to them about rest is rational posn.

Re – Dingell letter

Mike predictable, next step is subpoena — which is fine – there'd be transcripts

SDR How did Civil Div see ramif'ns of allowing people to look at these —
① for other law enf cases in general
② ~~to~~ for LNRD — ← (Besides SF related)

Files

1. Newspaper Articles.

~~fact~~

2. Document Indices

⑨ 7/7

Frey → a difficult question
We can say this is criminal case + not precluded from exercising exec priv.

Lew Over yrs - have been all sorts of compromises.

>DR If we R going to let them see ~~docs~~ docs at all - almost better to let them go out + see ~~it~~ it in regions - ~~Pts~~ Too much time.

Mike Ef sens but has to put the burden on us. Most cases have not been filed.

2-1-83 Working group

7/31/'; from D & SR

1) Dolan = are these criminal documents? is there new evidence of criminal conduct →

2) Wise → what activity is criminal?

3) SNR → discusses cooperative agreement →
say EPA has referred strengthen matter to DOJ for investigation.

4) Discussion of settlement options on civil case/ subpoenas →
a.) ct protective order = not very feasible →

b.) Civil option = view documents @ EPA but remain in co. possession
access allowed to documents to ______ <limit>
? note allowed = reviewed by ______; not Reed or exec. off.
if want document must subpoena them w/particularity
if EPA disagree, must file civil suit to enforce subpoena
if agreement breached + public disclosure etc then all bets off.
<underlying this agreement is assumption that [illegible]

c) OLA – question whether criminal evidence should voluntarily go to C.
Criminal Div. says (3d hand) no because not turn over evidence of criminal action because it may screw up criminal case? May brief committee on what's given?

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
v. : Criminal No. 83-184
RITA M. LAVELLE :

FILED
AUG 22 1983
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

DEFENDANT'S MOTION FOR DISCOVERY

Defendant moves this Court, pursuant to Fed. R. Crim. Pro. 12 and 16, to order the United States to produce for inspection and copying by defendant the materials described below. This motion should be granted for the reasons set forth in the Memorandum of Points and Authorities attached hereto.

A. Materials relating to the conduct of the grand jury proceeding.

1. Transcript of grand jury proceeding which resulted in the Indictment herein.

2. All memoranda, correspondence, notes, statements and other documents of any other description which were presented to the grand jury for its consideration in returning the Indictment against the defendant.

3. Materials relating to:

(a) the policy and procedures of the United States Department of Justice for the investigation and prosecution of former officials of the Executive Branch;

(b) the decision to proceed with a prosecution of the defendant herein;

(c) the decision to commence the grand jury investigation that led to the Indictment herein;

[illegible]

(d) decisions concerning the manner in which said grand jury investigation was to be conducted and the investigatory directions in which it was to proceed; and

(e) the utilization of current and former E.P.A. attorneys in the investigation of defendant which led to the Indictment herein.

B. Materials relating to the existence of an attorney-client relationship between defendant and E.P.A. attorneys.

1. All memoranda, correspondence, notes, statements and other documents of any description in the possession, custody or control of the Government covering the period April 1981 to the present and relating to:

(a) advice, briefings or consultation by E.P.A. staff attorneys with defendant concerning defendant's former employer (Aerojet-General Corp.) or subsidiaries thereof;

(b) drafting and presenting to defendant by E.P.A. staff attorneys of the "Statement of Certification" which is the basis of Counts I and II of the indictment herein;

(c) lists of possible and confirmed disposers at the Stringfellow waste disposal site and E.P.A. staff records relating thereto; and

(d) internal E.P.A. memoranda or other documents of or concerning defendant's conduct with respect to Aerojet-General.

C. Materials relating to conflicts of interest of current and former E.P.A. staff attorneys who participated in the investigation by or testified before the grand jury herein.

1. List of all former or current E.P.A. attorneys who either participated in the investigation of defendant or testified before the grand jury and who were also the subjects of investigation by the Department of Justice.

2. Names, job descriptions and duties of any attorneys who formerly worked at E.P.A. and subsequently worked in the Public Integrity Section or Criminal Division of the Department of Justice.

3. Internal E.P.A. job performance evaluations of any current for former E.P.A. attorneys who either participated in the investigation by or testified before the grand jury.

D. Any documents relating to participation by Stanley Brand, Esquire, Counsel to the House of Representatives, in the investigation by and proceedings of the grand jury herein.

E. Any and all information within the possession of the government which could constitute evidence favorable to the accused, or which may lead to material exculpatory evidence, within the meaning of Brady v. Maryland, 373 U.S. 93 (1963), particularly with respect to:

1. Any testimony regarding the alleged May 28, 1982 meeting (Stringfellow briefing) which indicates:

(a) The unstructured nature of the meeting.

(b) The questionable source or authenticity of any of the briefing materials, particularly those materials relating to the identification of Aerojet-General as a waste generator and possible responsible party.

2. Comments of Ms. Lavelle regarding the source or authenticity of the aforesaid briefing materials.

3. The form of the briefing materials.

4. The tenuous nature or questionable accuracy of any of the briefing materials.

In compliance with Local Rule 2-5 of the Local Rules of the United States District Court for the District of Columbia, defense counsel states that he has sought documents in a telephone discussion with Allen Carver, Esquire, who is assigned to the case, and that Mr. Carver stated that he would prefer to meet on "next Tuesday [August 23, 1983] or thereafter" to discuss documents.

James J. Bierbower

Mark B. Bierbower

Mark B. Bierbower

Attorneys for Defendant
1875 Eye Street, N.W.
Suite 1275
Washington, D.C. 20006
(202) 775-8900

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing and of the attached were delivered to the office of the United States Attorney, United States Courthouse, Washington, D.C. 20001, on August 22, 1983.

James J. Bierbower

Criminal Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

AUG 24 1984

RECEIVED
AUG 24 1984
JUDICIARY COMMITTEE

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Lavelle case was investigated and prosecuted under the supervision of Criminal Division attorneys, and I am the senior Division official who routinely followed the case. The trial attorneys who supervised the Lavelle investigation, and later tried the Lavelle case, and I have examined the materials enclosed with your August 22, 1984, letter to the Attorney General. We have determined that Ms. Lavelle was not and is not entitled to receive the materials of concern to you under either Brady v. Maryland, 373 U.S. 83 (1963) or the Federal Rules of Criminal Procedure.

Inasmuch as your letter indicates that you may believe that Ms. Lavelle was investigated in order to prevent or delay the Congress from obtaining access to certain documents and witnesses, I want to assure you that is not so. Ms. Lavelle, as well as a number of other officials of the Environmental Protection Agency, were investigated in order to determine whether or not there existed evidence of criminal misconduct sufficient to warrant criminal prosecution. Ms. Lavelle was neither singled out for special treatment nor investigated in order to withhold information from Congress.

Because we do not believe that the information which you have provided warrants further action by us, we do not intend to take such action. A copy of this letter will be sent to Ms. Lavelle's attorney, James J. Bierbower, and to the Clerk of the United States Court of Appeals for the District of Columbia Circuit.

Sincerely,

John C. Keeney

John C. Keeney
Deputy Assistant Attorney General
Criminal Division

cc: James J. Bierbower, Esquire
1875 Eye Street, N.W., Suite 1275
Washington, D.C. 20006

Mr. George A. Fisher
Clerk, U.S. Court of Appeals
for the District of Columbia Circuit
Washington, D.C. 20001

BEST COPY AVAILABLE

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

September 21, 1984

Honorable William French Smith
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

As you know, the Committee on the Judiciary is reviewing the Department of Justice's role in the withholding of Environmental Protection Agency Superfund documents from Congress in 1982-1983. As part of this inquiry, and in line with our discussions with the Department, the Committee requests access to, and in some cases copies of, certain additional documents that are necessary to our review. They are as follows:

1. Copies of documents, reviewed by the Committee staff in the spring of 1983, that became relevant to the inquiry only after review of the Department materials withheld from the Committee until July, 1984:

From the Land and Natural Resources Division:

- Undated copy of certification under which documents were withheld under a claim of executive privilege from the Dingell Subcommittee (File - Documents withheld).
- All correspondence between former EPA Administrator Gorsuch and Department officials from January 1, 1983, through March 10, 1983.
- Memorandum, dated February 16, 1983, from Ann Gailis to Assistant Attorney General Carol Dinkins re: Stringfellow recordings (File - Correspondence file of Assistant Attorney General Dinkins).

From the Civil Division:

- All draft declarations and exhibits in United States v. House of Representatives of the United States.
- All draft indices of documents withheld from Congress.
- Memorandum, dated January 27, 1983, from Mary Walker to Lewis Wise (File - Lewis Wise).

- Handwritten notes of Lewis Wise, dated February 9 and February 11 or 16, 1983.

- Memorandum, dated February 1, 1983, from Assistant Attorney General Robert McConnell to Assistant Attorney General Paul McGrath, with attachment (File - Correspondence file of Assistant Attorney General Paul McGrath).

From the Office of Legal Counsel:

- List of documents withheld from Levitas Subcommittee in December, 1982 (File - Loose papers of Assistant Attorney General Theodore Olson).

- Paper-clipped list of documents withheld from Dingell Subcommittee (xeroxed copies to show where paperclips found) (File - Withheld EPA documents file of Assistant Attorney General Olson).

- Unsigned memorandum on White House letterhead, dated October 26, 1982, to Larry Simms re: new first page on Presidential Directive to Administrator Gorsuch (File - Final OLC opinions or documents not already provided to Judiciary).

2. Copies of documents referred to in materials reviewed by the Committee staff, or in interviews of Department employees conducted by the Committee staff:

- Copies of EPA documents withheld from Congress in December, 1982, that bear the initials of personnel in the Department of Justice who reviewed the documents (probably located in the files of the Land and Natural Resources Division).

- Briefing book prepared by EPA for Civil Division Attorney Betsy Grey.

- All Department regulations and policies that relate to Congressional requests for information, documents, interviews or comments.

3. Copy of a document referred to in the August, 1984, Report of the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce on the President's Claim of Executive Privilege:

- Memorandum of FBI interview with Richard A. Hauser, Deputy Counsel to the President, June 16, 1983.

4. Access to all documents or other materials within the Department (including the Federal Bureau of Investigation) referring or relating to any investigations of former EPA Assistant Administrator Rita M. Lavelle that pre-date March 2, 1983. (The Committee has already been provided with access to, and copies of, some handwritten notes on this matter. These obviously need not be made available again.)

In addition, the Committee requests access to all materials relating to the Department's handling of the Judiciary Committee's investigation (through June, 1984), including withholding of requested documents from the Committee. Some of these materials have already been made available to the staff, and some copies have been produced at the Committee's request. (These of course need not be provided again.) The Committee is aware of at least the following additional documents that have not been provided:

- Handwritten notes of Deputy Assistant General Michael Dolan, dated April 2 and 16, 1984.

- Memorandum, dated April 4, 1984, from Assistant Attorney General Robert McConnell to Attorney General Smith, et al., titled "House Judiciary Committee Inquiry into the Department's Role in the EPA Controversy," with attachments.

The Committee has also recently learned that there were at least two meetings, on April 10 and 16, 1984, at which the withheld documents were discussed and for which there may be handwritten notes. If such notes exist, they should also be made available, along with any other relevant materials.

Please make all requested documents available by the close of business Wednesday, September 26, 1984. Of course, my staff is available to provide any clarification or assistance the Department needs.

Sincerely,

Peter W Rodino

PETER W. RODINO, JR.
Chairman

PWR:csm

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

October 26, 1984

Honorable William French Smith
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing about the failure of the Department of Justice to comply with requests for documents made by the Committee on the Judiciary as part of our inquiry into the Department's role in the withholding of Environmental Protection Agency Superfund documents from Congress in 1982-1983. Some of these requests have been outstanding since February, 1983, and other materials were requested by letter over a month ago and have not been produced. The Committee is interested in completing its inquiry, but failure to provide the requested information is unreasonably delaying this matter.

For twenty months, the Committee has attempted to obtain a full accounting of, and access to, all documents prepared by or in the possession of the Department relating to this matter. My first letter to you on this subject, dated February 24, 1983, stated that explicitly, and the request for all materials was restated publicly at hearings at which Assistant Attorney General Olson testified (on March 10, 1983) and you appeared (on March 15, 1983). I have emphasized the need for full production in meetings with Associate Attorney General Jensen, and I was personally given every assurance that these materials would be furnished.

Despite the unequivocal nature of the Committee's request, the Department withheld directly relevant handwritten notes and detailed chronologies for over one year without advising the Committee of their existence. In the course of reviewing those materials provided by the Department or in interviewing Department witnesses, the Committee has learned of other documents which fall within our original request, but were not provided to the Committee.

The Committee expects the Department's full cooperation in this matter and its good faith efforts to locate and provide all materials relevant to the Committee inquiry. The Committee asks that the Department fully comply with the document requests set forth in the attached appendix by close of business Tuesday, October 30, 1984.

While I have received numerous requests from the press about this matter, I have refrained from commenting, because it was my position and hope that the Department would be furnishing all relevant information in a timely fashion, and any judgment should be reserved. However, I will not be in any position to continue to reserve judgment if such delay continues.

Upon providing the documents responsive to the Committee's outstanding requests by October 30, I would ask for your assurance that the Department has produced all materials responsive to the Committee inquiry.

Sincerely,

PETER W. RODINO, JR.
Chairman

PWR:ema

Enclosure

APPENDIX

A. All documents responsive to the Committee's February 24 and July 21, 1983 requests, including:

1. Access to all materials relevant to the Committee inquiry prepared by or in the possession of those Department employees not yet scheduled for interviews by the staff. (The names of those individuals whose documents have not been made available have already been provided to Department representatives.)

2. Access to all materials relevant to the Committee inquiry prepared by Kenneth Starr.

3. Copies of the following specific documents:

* Attachment to March 8, 1983 memorandum from Assistant Attorney General Carol Dinkins to Assistant Attorney General Lowell Jensen (the so-called Paul Schaeffer memorandum).

* Routing slip dated December 22, 1982 from Stephen Ramsey to Mary Walker, and her return note dated January 3, 1983, with any attachments.

B. Documents responsive to the Committee's September 21, 1984 request:

1. Access to all documents or other materials within the Department (including the Federal Bureau of Investigation) referring or relating to any investigations of former EPA Assistant Administrator Rita M. Lavelle that pre-date March 2, 1983. (Those handwritten notes on this subject which have already been made available to the Committee need not be provided again.)

2. Access to all documents relating to the Department's handling of the Judiciary Committee investigation (through June, 1984), including the withholding of requested documents from the Committee. (Again, those materials which have already been made available need not be provided.)

3. Copies of EPA documents withheld from Congress in December, 1982 that bear the initials of personnel in the Department who reviewed the documents.

C. Other documents relevant to the Committee inquiry:

1. Copies of all materials relating to Assistant Attorney General Olson's testimony before the Committee on March 10, 1983, including any notes, memoranda or other documents prepared subsequent to the hearing by any Department employees regarding his testimony. (Corrected transcripts already submitted to the Committee need not be provided.)

2. Access to all documents relating to an internal Department inquiry into the events surrounding the February 25, 1983 referral of certain EPA notes from Administrator Burford to Deputy Attorney General Schmults. This inquiry was apparently conducted in the fall of 1983 primarily by a Lands Division paralegal and an assistant to Mr. Schmults. In addition to any memoranda, notes, or other documents prepared in the course of this inquiry, the Committee requests the notes of the participants any any meetings where the inquiry or its findings were discussed.

3. Access to all materials in the Office of Legal Counsel which refer or relate to the "walling off" or planned "walling off" of the Department from EPA in early 1983.

U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

October 30, 1984

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of October 26, 1984, which we received Friday at 6:30 p.m. Your letter requested our response concerning certain documents, as specified in an appendix, by the close of business today.

As you are well aware, the Department of Justice has sought to cooperate with the inquiry that you initiated nearly two years ago regarding the Department's role in the assertion of executive privilege with regard to Environmental Protection Agency (EPA) documents. We have made an exception to the Department's ordinary policy by permitting your staff to interview a number of employees, who have been free to discuss fully the events that are the subject of your inquiry without regard to any otherwise applicable privileges. To date your staff has conducted some 150 hours of interviews with 12 employees, with 3 additional employees scheduled to be interviewed this week. These are in addition to your staff's interviews of former Deputy Attorney General Schmults and former United States Attorney Harris and one of his assistants.

In the course of this inquiry, you have made written document production requests on six occasions: February 24, 1983; March 2, 1983; July 21, 1983; May 24, 1984; September 21, 1984; and October 26, 1984. In response to these requests, the Department has produced a substantial number of documents. We have even made an exception to our customary practice by permitting your staff to have access to internal deliberative documents, including drafts and handwritten notes, that were contained in the Department's files. From this larger volume of documents, your staff has requested and been provided with copies of approximately 2,700 pages of documents.

Throughout this process, we have had great difficulty in determining the scope and nature of your inquiry and, thus, your requests for document production. Indeed, you have refused to permit a Department representative to attend staff interviews of our employees, and your staff has asked interviewees not to disclose to the Department the questions they were asked. Under these circumstances, it is difficult for the Department to respond to a blanket request for all documents that are relevant to this inquiry.

Where you have identified specific documents in your requests, we have endeavored to respond. However, each of your requests--including the October 26, 1984 letter--has expanded upon the scope of documents that had been previously requested. Notwithstanding the ever-increasing scope of your document requests, the Department has responded in good faith by producing the requested documents or by explaining why documents were not being made available.

Our response to the specific issues raised in the appendix to your October 26, 1984, letter is as follows.

A.1. You have requested access to "all materials relevant to the Committee inquiry prepared by or in the possession of those Department employees not yet scheduled for interviews by the Staff." As you may know, members of your staff have on a number of occasions changed their listing of Justice Department persons they were considering for interviews. The most recent list, conveyed by an October 15 telephone call from members of your staff, identified 24 persons.

Your staff has already had access to documents from several of the persons on the latest list. However, in light of your letter's expressions of concern, the Department is in the process of contacting each of those persons to determine what additional materials, if any, they prepared or possess that relate to the Department's role in the assertion of executive privilege with regard to EPA documents during the period September 1982 through March 1983. We are requesting these 24 persons to respond by the end of this week and will promptly advise you of the results of this effort.

A.2. Your staff has not identified Kenneth Starr as a person who is being considered for an interview, and your October 26 letter is the first request that has been made for documents prepared by him, except for a particular document that we provided on May 18, 1984. As with the 24 persons identified on October 15, we will contact Judge Starr to determine what materials, if any, he prepared or possesses that relate to the Department's role in the assertion of executive privilege with regard to EPA documents during the period September 1982 through March 1983.

A.3. We are providing copies of these materials. It should be noted that your staff has previously been given access to the second document requested in this category. This is the first time that copies of the December 22. 1982 routing slip and January 3, 1983 return note and attachments have been requested. Because the attachments are EPA documents which may continue to be enforcement sensitive, we are including the first page of each attachment, redacted in the same manner as previously provided to congressional committees. If this does not meet the purposes of your request, please advise us so that other arrangements can be considered.

B. Notwithstanding the implication of your letter that there have been months of delay in all aspects of the Department's responses to your requests, all documents sought in Category B were requested for the first time by your letter of September 21, 1984. I subsequently met with your General Counsel on these requests, and discussed the matter with her again yesterday.

B.1. Until recently, we had understood that you did not seek access to active criminal files, but it now appears that you are requesting such materials. Consistent with the longstanding practice of the Department, we are unable to provide such access at this time. If you believe that the request seeks materials in the Department other than those involved in the open criminal matter, please identify them or define your interests more specifically.

B.2. Your letter of February 25, 1983 states that this inquiry concerns the Department's role in the assertion of executive privilege with regard to EPA documents during the period September 1982 through March 1983. As I discussed with your General Counsel on more than one occasion, we cannot accede to an ever-broadening scope of your inquiry, which is now asserted to include all documents generated by the Department during the period April 1983 through June 1984.

B.3. Your staff has previously been given access to these documents. We are now providing copies of the pages of the 51 documents which bear initials, as we understand that the Committee staff is specifically interested in that material, and already has obtained from other sources an uninitialed set of these EPA documents. We have redacted the first pages to correspond with redacted versions previously supplied to congressional committees.

C. I must note for the record that your October 26 letter is the first specific request for the documents identified in this category. We are attempting to determine what documents may be covered by this request, and will promptly respond to your request after our review is complete. I can assure you that we are undertaking that review in an expeditious manner.

Please have your staff contact Dennis Linder, as has been our normal procedure, to obtain copies of the documents being made available as stated in this letter.

Sincerely,

D. LOWELL JENSEN
Associate Attorney General

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

November 2, 1984

MEMORANDUM

TO: Peter W. Rodino, Jr.
Chairman

FROM: The Staff

RE: Comments on October 30, 1984 Letter from Associate Attorney General D. Lowell Jensen, Department of Justice

On October 26, 1984, you wrote to the Attorney General concerning the continuing failure of the Department of Justice to cooperate with the Committee in its inquiry into the Department's role in the withholding of Environmental Protection Agency documents from Congress in 1982-1983. As you will recall, your letter requested the prompt production of a number of Department documents relevant to the investigation, many of which had initially been requested some time ago. In addition, you sought the Attorney General's personal assurance that the Department had finally made available all materials responsive to the Committee inquiry.

The Department's October 30, 1984 response explicitly refuses to make available entire categories of documents, contains no assurance that the Department has conducted a reasonable search of its files for relevant materials, and fails to address your concerns about the Department's conduct in this matter. Moreover, Mr. Jensen's letter contains a number of staggering admissions and is premised on blatant mischaracterizations of Committee actions and wholesale distortions of the facts. Despite the Department's professed two-year record of cooperation, Mr. Jensen's response is yet another example of the Department's continuing effort to delav and undermine the Committee's inquiry.

With respect to the general comments near the beginning of Mr. Jensen's letter that purport to summarize the history of the investigation, there would appear to be a number of highly misleading statements. We would call the following points to your attention:

1.) The Committee inquiry is not constantly expanding.

Mr. Jensen's letter refers to the "ever broadening" inquiry of the Committee. It also lists a number of written Committee requests for documents and states that "each of your documents requests -- including the October 26, 1984 letter -- has expanded upon the scope of documents that has been previously requested."

The facts simply do not support the implication of an ever-widening inquiry. Mr. Jensen's response mentions six written request letters. The letter of February 24, 1983 was the Committee's original request, made in the context of the oversight/authorization hearings for the Department for FY 1984. The letter of March 2, 1983 was in substance a contemporaneous request for a subset of documents requested on February 24 for use in your subcommittee's oversight hearing with respect to the Office of Legal Counsel. It does not represent an expansion. Similarly, the heart of the July 21, 1983 letter was a narrow request for copies of specifically identified documents already reviewed by the staff. To the extent it expanded the document request at all, it sought only a complete set of

Congressional correspondence (a request with which the Department has never complied). Finally, the letter of May 24, 1984 sought few, if any, documents not already requested; the purpose of the letter was to stress the Department's lack of cooperation up to that time.

The inquiry has expanded recently only as a direct result of the Department's deliberate withholding of highly relevant materials from the Judiciary Committee for over one year -- a fact which we learned for the first time only in April of this year. Your September 21, 1984 letter requested documents concerning the Department's handling of the Committee inquiry because the withholding had resulted in the unnecessary expenditure of significant additional resources by the Committee, and, more importantly, because the contents of the withheld documents appeared to raise serious questions about the motive in withholding them.

The "new" requests of the October 26 letter would impose minor additional burdens but are extremely important to the Committee. As explained more fully below, the Committee previously had no basis to request these documents because, although they were highly relevant, their existence was not disclosed until Department employees were specifically asked in the course of interviews.

2.) The Committee's request is not burdensome.

Mr. Jensen's letter cites unverified statistics about the number of hours of interviews and the numbers of pages produced that create a misleading picture of the burden imposed on the Department by the Committee investigation. With respect to the interviews, you have directed the Committee staff to be as thorough as possible in attempting to reconstruct the Department's account of the underlying events. Likewise, you have made it plain that the Department is not -- and cannot be -- immune from scrutiny.

With respect to the number of pages of documents produced, it is but a small fraction of the documents examined by the staff. In general, you have tried hard to minimize the burden on the Department by asking for access to documents first, and copies only when absolutely necessary. Moreover, in an undertaking of this importance, the number of pages the Department states it has produced is not unreasonable.

The Committee has made similar document and interview requests from EPA and the various Congressional offices involved. All have cooperated promptly and completely and none has ever stated or even intimated that the Committee's fact-finding posed a burden.

3.) The Committee's informational needs are clear.

Mr. Jensen's letter states: "Throughout this process, we have had great difficulty in determining the nature and scope for your inquiry and thus your requests for document production."

This statement is particularly disingenuous. The first paragraph of your February 24 letter unambiguously identifies the concerns the Committee is addressing, and the document request on page 1 recites: "Please supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional Committees have subpoeaned from the EPA." At hearings on March 10 and 15, 1983, the Committee made clear that it was seeking all such documents.

Although Mr. Jensen suggests that the Department has been consistently perplexed, we are unaware of any instance in which any Department representative has asked the Committee staff whether any document or class of documents is responsive to the Committee's request. Moreover, when the present Department representatives were assigned, the Committee staff briefed them in detail concerning the Committee's informational requests.

4.) The Department has never accounted for all the documents or given assurances of the completeness of its compliance.

Mr. Jensen's letter states: "Notwithstanding the ever-increasing scope of your document requests, the Department has responded in good faith by producing the requested documents or by explaining why documents were not being made available." This statement suggests that the Department has accounted for all the documents either by producing them or explaining why they are not available.

This is perhaps the most significant distortion in Mr. Jensen's letter. Contrary to the suggestion, the history of the investigation has been one of deliberate deception and total lack of accountability. As noted above, the Department deliberately withheld relevant documents for over one year without advising the Committee. Furthermore, the Committee has consistently experienced serious difficulties in even obtaining answers to document requests. Most recently, Mr. Jensen did not communicate the Department's unwillingness to provide certain categories of documents requested on September 21 until October 25, after the Committee's General Counsel had pressed for an answer repeatedly. Even now, in virtually every interview, the staff continues to find evidence of responsive documents that have never been supplied.

Turning to Mr. Jensen's response to your specific document requests, we would emphasize the following facts:

A.1. The most disturbing aspect of this portion of Mr. Jensen's response is the admission that the Department is only now seeking documents and information from over 20 Department employees identified by the Committee staff as having some role in the Department's actions during the EPA controversy. This statement dramatically underscores the completely inadequate nature of the Department's response to the original February 24, 1983 request for all materials in the possession of the Department relating to the Committee investigation. It is the responsibility of the Department, not the Committee, to identify Department employees involved in the controversy who might have responsive documents. Clearly, the Department should have approached all those individuals in February 1983 and immediately produced for review any materials in their possession relevant to our inquiry.

Even if one were to accept Mr. Jensen's incredible suggestion that the Department was under no obligation to search its own files for information responsive to your original request, but needed only to respond to particularized requests from the Committee staff, virtually all of the documents in this category still should have been produced months ago. Contrary to the implication in Mr. Jensen's letter, Department representatives were aware of a number of individuals whose files needed to be searched as early as May 14, 1984, and a list almost identical to that conveyed to the Department on October 15, 1984 was provided on August 2, 1984. In fact, only four names given to the Department on October 15 were not on the August 2 list, and two of those had been discovered only recently. (We would add that if Mr. Jensen's statement that the staff "has already had access to documents from several of the persons on the latest list" is an attempt to imply that the Committee is asking again for documents it has already seen, it is a gross distortion of the truth. We were careful to identify all three individuals on the list whose files had been provided, and told the Department representatives that their documents need not be provided again.)

A.2. Mr. Jensen's letter is correct when it states that the staff has not identified Kenneth Starr as a person being considered for an interview. It was for that reason that he was not listed in category A.1. Nonetheless, simply because Judge Starr has not been listed as a potential interviewee does not excuse the Department's failure to contact him in advance of this week to determine whether he has any information relevant to the Committee inquiry. Once again, the October 26 letter was most assuredly not the first request the Committee made for relevant documents prepared by him; the first request was made on February 24, 1983. As Mr. Jensen admits in his response, the Committee has already been provided with one document prepared by Mr. Starr, found in a file elsewhere in the Department.

A.3. Although the Department has provided the two documents in this category, the record with respect to them still needs to be clarified. First, with respect to the Schaeffer memorandum, a copy of this document was requested initially on July 21, 1983, along with approximately 100 other documents. When some of these materials were finally provided to the Committee ten months later, the memorandum was not included. Because the memorandum was an attachment to another requested document, we thought the omission might be a simple oversight, and so advised the Department on June 26, 1984. On July 18, 1984, the Department made a second delivery with respect to the July 1983 request and again omitted the memorandum. At that time, and on a number of occasions since then, the staff again asked Department representatives for the document, without result.

With respect to the December 22, 1982 routing slip and the January 23, 1983 return note, despite Mr. Jensen's representation, the staff has never previously been given access to these documents. Two facts support this conclusion. First, the two majority counsels and one minority counsel who reviewed the documents at the Department in 1983 did so independently -- that is, each of us reviewed every document on his own. Moreover, the majority staff was specifically searching for any materials indicating Department review of any documents withheld from the Dingell or Levitas Subcommittees -- such as the routing slip and return note. It is highly unlikely that all three of us could have missed it; however, the documents are apparently not reflected in the notes taken during the process by any of us.

Second, the Committee staff has repeatedly inquired of Department witnesses about notes taken by Department employees while reviewing the documents withheld from the Levitas Subcommittee. Until the staff interviewed a former Lands Division Deputy Assistant Attorney General last week, no one, including a custodian of the Lands Division documents, had any recollection of the existence of the routing slip and return note. In fact, the Committee staff asked one Department employee, who would be familiar with the routing slip, to search the files for any Levitas document review notes, and the employee reported back that none could be located.

B. The Department baldly refuses to provide two of the three sets of requested documents in this category. Mr. Jensen's letter cites no precedent and offers no authorities for this refusal. Nor does the letter cite a possible claim of executive privilege as a basis for the Department's actions. While typifying the Department's lack of cooperation, this response directly violates President Reagan's instruction of November 4, 1982 that executive agencies promptly cooperate with official Congressional requests unless it is determined that compliance raises a significant question of executive privilege. In this case, of course, no claim of executive privilege could lie because of the strong interest of the Committee in determining whether the documents contain evidence of misconduct by executive branch officials. See letter from Attorney General William French Smith to Chairman John D. Dingell, dated November 30, 1982.

B.1. Mr. Jensen's letter implies that the Department has only recently learned of the Committee's interest in the Rita Lavelle criminal file. Of course, this implication is inaccurate; your letter of August 22, 1984 notified the Department of the Committee's intent to gather the facts surrounding the genesis of the Lavelle prosecution.

The Committee needs information on the criminal prosecution of Ms. Lavelle for the specific purpose of determining whether the Lavelle investigation was commenced for improper reasons and to assess whether any Department officials engaged in improper conduct with respect to Ms. Lavelle or the Dingell Subcommittee. As you know, the withheld handwritten notes contain troubling references raising questions about whether Department officials sought to open a criminal investigation of Ms. Lavelle as part of an effort to block interview and informational requests of a Congressional committee. Although the Department has denied any impropriety, the notes present a matter of the utmost seriousness in the administration of criminal justice. It would appear incumbent on the Committee to determine if the Department officials considered misusing -- or did misuse -- the criminal process for the purpose of obstructing an official investigation of a Congressional committee.

The Committee's interest in the Lavelle prosecution stems from its oversight jurisdiction over the Department of Justice and its legislative responsibilities with respect to the criminal laws. The Committee's request is as narrowly focused as possible. It requests access, not copies. Equally important, it seeks only information relating to the Lavelle investigation predating March 2, 1983. We note that the Washington Post (Oct. 7, 1984, p. A-18) indicates that the Lavelle investigation was not even commenced until March 1983.

B.2. With respect to the documents in this category, the Committee needs access to determine if any Department officials engaged in misconduct with respect to the Committee on the Judiciary. As noted above, the contents of the withheld handwritten notes raise questions about why the documents were not produced. Moreover, the staff has been advised that at least two senior Department officials read at least some of the notes at the time they were withheld, and that one senior Department official implemented a "red-flag" procedure under which documents were carefully screened for withholding. Although the Department's October 30, 1984 letter seems not to recognize the very serious potential implications of this conduct, the Committee is faced with a possible obstruction of its inquiry.

B.3. Although the documents in this category were called for by your February 24, 1983 letter, they were not made available until September 1984. The Committee staff would never have discovered them at all except that another Department document contains references to them. The September 21 letter requested copies; the Department provided only access. Since September, the Committee staff has repeatedly requested copies for use in interviews, but they were only provided over a month later. The Department's delay is simply inexcusable.

C. As we have already explained, the documents in this category were only disclosed to the Committee staff recently during the course of interviews with Department employees. The record should be clear, however, that the Department could have provided these materials on its own had it been seriously interested in cooperating with the Committee.

C.1. Assistant Attorney General Olson's testimony before the Judiciary Committee on March 10, 1983 was almost entirely devoted to the EPA controversy, and it is self-evident that any materials that might relate to the accuracy of his statements to the Committee would be relevant to our inquiry. You raised the issue of Mr. Olson's testimony directly with Mr. Jensen in a meeting on May 4, 1984, and mentioned it again in a letter to the Attorney General some three weeks later.

C.2. Although the internal Department inquiry into the events surrounding the February 25, 1983 EPA referral did not occur until the fall of 1983, it is clear that the referral which was the subject of the inquiry is also a subject of the Committee investigation, since the Department has repeatedly been advised that we are concentrating on the EPA controversy through its conclusion in March 1983. The information the Department gathered on this critical referral would obviously be of use to the Committee, and we are at a loss to understand why the Department did not see fit to produce it.

C.3. The material in this category comes within the Committee's original request for all information on the EPA controversy. Nonetheless, because the individual in the Office of Legal Counsel who apparently prepared the documents had an extremely limited role in the matter, the Department might not have known of their existence. Therefore, we chose to treat this category as a new request.

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

November 8, 1984

Honorable William French Smith
Attorney General of the United States
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

On October 26, 1984, I wrote to you concerning the failure of the Department of Justice to comply with requests by the Committee on the Judiciary to furnish information in its inquiry into the Department's role in the withholding of Environmental Protection Agency documents from Congress in 1982-1983. My letter requested the prompt production of a number of Department documents relevant to our investigation, most of which had initially been requested some time ago. In addition, I sought your assurance that the Department had finally made available all materials responsive to the Committee inquiry.

The Department's October 30, 1984 response refuses to make available entire categories of documents, contains no assurance that the Department has conducted a thorough search of its files for relevant materials, and fails to address the Committee's concern that the Department provide all relevant documents without delay. In addition, the Department's response would appear to be premised on a number of erroneous facts. Although I do not believe it would be productive at this point to address every incorrect statement contained in the October 30 letter, I feel it necessary to clarify some of the most important facts surrounding the Committee's inquiry.

First, the Committee's informational needs are clear, and our inquiry is not "ever broadening." The Committee's basic request is not complicated. The first paragraph of my February 24, 1983 letter unambiguously identifies the concerns the Committee is addressing, and the document request on page 1 recites: "Please supply all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional Committees have subpoenaed from the EPA." At hearings on March 10 and 15, 1983, the Committee made clear that it was seeking all such documents. Neither of the subsequent letters I sent to you in 1983 altered the Committee's basic request for information, and the main purpose of the May 24, 1984 letter was to stress the Department's lack of cooperation up to that time.

I would emphasize that the only expansion of the Committee's inquiry occurred as a direct result of the Department's withholding of highly relevant materials from the Committee for over one year -- a fact the Committee learned for the first time in the spring of this year. The Committee's September 21, 1984 letter requested documents concerning the Department's handling of the Committee inquiry because the withholding had resulted in the unnecessary expenditure of significant additional resources by the Committee, and, more importantly, because the contents of the withheld documents appeared to raise serious questions about why this material was withheld.

Second, the Committee's requests of the Department have not been burdensome. With respect to interviews of Department officials, I have directed the Committee staff to be as thorough as possible in attempting to reconstruct the Department's account of the underlying events. The issues are too important to be treated cursorily, and I am determined fully and fairly to understand the Department's perspective. I am also certain you share my view that the Department is not -- and cannot be -- immune from scrutiny.

With respect to the number of pages of documents produced, it is but a small fraction of the documents examined by the staff. In general, the Committee has tried hard to minimize the burden on the Department by asking for access to documents first, and copies only when absolutely necessary. Moreover, in an undertaking of this importance, I think you will agree that the number of pages the Department states it has produced is not unreasonable.

As you know, the Committee has made similar document and interview requests from EPA and the various Congressional offices involved. All have cooperated promptly and completely.

Third, and perhaps most important, the Department has never accounted for all the requested documents or given assurances of the completeness of its compliance. The Department's October 30 response incorrectly suggests that the Department has accounted for all the documents either by producing them or explaining why they are not available. As I have already noted, however, the Department withheld relevant documents for over one year without advising the Committee. Additionally, in virtually every interview, the staff continues to find evidence of responsive documents that have not been supplied to the Committee.

Turning to the Department's response to the specific document requests contained in my letter of October 26, 1984, I would emphasize the following facts:

A. The Department's October 30 response indicates that the Department is only now seeking documents and information from over 20 Department employees (including Mr. Kenneth Starr) identified by the Committee staff as having some role in the Department's actions during the EPA controversy. This statement underscores the inadequacy of the Department's response to my original February 24, 1983 request for all materials in the possession of the Department relating to the Committee investigation. It is the responsibility of the Department, not the Committee, to identify the Department employees involved in the controversy who might have responsive documents. Clearly, the Department should have approached all those individuals in February, 1983, and immediately produced for our review any materials in their possession relevant to our inquiry.

In the letter of October 30, the Department promised to contact the individuals whose files apparently have not been made available to ascertain whether those individuals have relevant documents "by the end of this week [i.e., November 2] and . . . promptly advise [the Committee] of the results of this effort". It is now November 8, and the Committee has not been advised that the documents have been assembled and are available for review.

B. The Department refuses to provide certain requested documents but cites no precedent and offers no authorities for this refusal. Nor does the letter cite a possible claim of executive privilege as a basis for the Department's actions. This response is directly contrary to President Reagan's instruction of November 4, 1982, that executive agencies promptly cooperate with official Congressional requests unless it is determined that compliance raises a significant question of executive privilege. In this case, of course, no claim of executive privilege could lie because of the interest of the Committee in determining whether the documents contain evidence of misconduct by executive branch officials. See letter from Attorney General William French Smith to Chairman John D. Dingell, dated November 30, 1982.

More particularly, the Committee needs information on the criminal prosecution of former EPA Assistant Administrator Rita Lavelle for the specific purpose of determining whether Department officials sought to open a criminal investigation in part to block interview and informational requests of a Congressional committee. As you know, certain of the handwritten notes withheld from the Judiciary Committee raise this possibility, and it is incumbent on the Committee to determine if any Department officials considered misusing -- or did misuse -- the criminal process for the purpose of obstructing an official investigation of a Congressional committee.

The Committee's interest in the Lavelle prosecution stems from its oversight jurisdiction over the Department of Justice and its legislative responsibilities with respect to the criminal laws. The Committee's request is as narrowly focused as possible. It seeks only information relating to the Lavelle investigation predating March 2, 1983.

With respect to the Committee's request for access to all documents relating to the Department's handling of our inquiry (through June, 1984), I would note that the Committee is also investigating possible misconduct by Department officials. As I noted above, the contents of the handwritten notes withheld from the Judiciary Committee raise questions about why these documents were withheld. Moreover, the Committee has been advised that many of the notes were reviewed at the time they were withheld, and that one division implemented a procedure under which documents were screened for withholding. The Committee is faced with a possible obstruction of its inquiry that it must address.

C. A number of relevant documents have only been disclosed to the Committee recently during the course of staff interviews with Department employees. The Department should have provided these materials if it was interested in fully cooperating with the Committee.

For example, Assistant Attorney General Olson's testimony before the Judiciary Committee on March 10, 1983 was almost entirely devoted to the EPA controversy, and it is self-evident that any materials that might relate to the accuracy of his statements to the Committee would be relevant to our inquiry. I raised the issue of Mr. Olson's testimony directly with Associate Attorney General Jensen in a meeting on May 4, 1984, and mentioned it again in my letter to you some three weeks later.

Finally, although the internal Department inquiry into the events surrounding the February 25, 1983 EPA referral did not occur until the fall of 1983, it is clear that the referral which was the subject of the inquiry is also a subject of the Committee investigation, since the Department has repeatedly been advised that we are concentrating on the EPA controversy through its conclusion in March 1983.

Throughout this inquiry, the Committee has attempted to give the Department every benefit of the doubt. We have also tried to respond with patience to the Department's delays in complying with our requests for documents and interviews. All patience has limits, however. The Committee is under an obligation to discharge its responsibility to the Congress and to complete its report on this matter.

The Committee expects the Department's complete and prompt compliance with all outstanding requests. The Committee staff has been instructed to begin drafting the report on this matter in early December.

Sincerely,

Peter W Rodino

PETER W. RODINO, JR.
Chairman

PWR:emm

U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

NOV 19 1984

RECEIVED
NOV 1 9 1984
JUDICIARY COMMITTEE

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of November 8, 1984, which we received on November 14. Your letter reiterates a number of requests for the production of documents by the Department of Justice.

A. As stated in my letter of October 30, 1984, we have contacted the 24 persons you identified to determine what additional materials, if any, they prepared or possess relating to the Department's role in the assertion of executive privilege during the period September 1982 through March 1983. Because several of these persons were away from Washington and unavailable, we were not able to complete this process until recently.

Of the 24 persons contacted, twenty persons have advised us that they do not have any relevant documents other than those that have already been produced to your staff. Four persons have documents or notes which may not have been previously produced, and your staff will be given access to these materials. These materials consist of two transmittal memoranda and attachments, six pages of personal notes, two pages of handwritten notes on two documents that you have already reviewed, and the documents identified in paragraph C.3 below. In addition, Judge Starr has provided us with three pages of undated personal notes, which will be made available.

B. The documents in this category were requested for the first time in your letter of September 21, 1984, some nineteen months after your inquiry had commenced. Our response is unchanged from my letter of October 30, 1984. However, I must make the Department's position clear on some matters raised in your most recent letter.

1. The Department of Justice did not investigate or prosecute Rita Lavelle, as you suggest, in order to block interview and informational requests of a congressional

committee. This preposterous allegation is completely false. I would point out that it has been previously responded to and denied by Deputy Assistant Attorney General John C. Keeney in his letter to you of August 24, 1984, copies of which were provided to Ms. Lavelle's attorney and to the court that is considering her appeal.

2. Your letter includes other vague and unsubstantiated references to supposed misconduct by Department officials, and repeats a suggestion made in your letter of May 24, 1984, that Assistant Attorney General Theodore B. Olson made inaccurate statements in testimony before your Committee on March 10, 1983. As the Attorney General stated in his letter to you of June 7, 1984, we will immediately investigate any facts that raise concern about the conduct of Department officials. To date, however, you have provided no such information.

C. These categories of documents were specifically identified and requested in your letter of October 26, 1984.

1. We have re-examined the files in the possession of the Office of Legal Counsel and have not identified any documents concerning the testimony of former Assistant Attorney General Olson before the Committee on March 10, 1983, other than those that have already been made available to you.

2. We have located a draft memorandum and some notes concerning an internal Department inquiry into events surrounding the February 25, 1983, referral of certain notes of EPA employees to the Department. It is our understanding that the memorandum was not finalized. This material was prepared in September and October of 1983, and thus falls well outside the time-frame of the events that you have stated are the subject of your inquiry. Therefore, this material is not being made available for review by your staff.

3. Several draft documents concerning the relationship among components of the Department in early 1983 have been identified. These documents do not relate to a "walling off" of the Department from EPA, per se, as stated in the appendix to your October 26 letter, but to insulating the Criminal Division from other activities of the Department and EPA. These will also be made available to your staff for review.

As in the past, your staff may contact Dennis Linder or Tom Millet to arrange a time to review the materials that are being made available.

Sincerely,

D. LOWELL JENSEN
Associate Attorney General

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 29, 1984

Honorable Peter W. Rodino, Jr.
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Rodino:

I am puzzled about something that happened this afternoon, and I thought I should write you directly about it.

Several weeks ago one of your staff members contacted my Special Assistant to ask for an interview with me. He indicated that he wished to interview me about the EPA/executive privilege controversy of late 1982 and early 1983. As the then head of the Civil Division I was responsible for litigation that stemmed from that disagreement between a committee of the House and the Executive Branch. I directed my Special Assistant to tell your staffer and to confirm in writing that I would be very happy to cooperate with the investigation, and that we offered several alternative dates for the meeting. We indicated that I would follow my usual practice of having someone from my office with me at the interview. I also indicated that we would comply with any confidentiality requirements that were necessary. As requested, I set aside three to four hours this afternoon for the interview.

When your staffers, Messrs. Cuneo and Schweitzer, arrived (along with Mr. Boyd, Minority Counsel) I repeated to them that I would be happy to help them in their investigation in any way. Instead of continuing the interview, they indicated that they were unwilling to discuss the matter with me unless I was alone. Since I do not conduct business that way and could see no reason to do so in this case since confidentiality was not a problem, the meeting ended.

I am baffled by what happened. The only way I could find time for this interview in my incredibly busy schedule was to work later into the night and start earlier in the morning than I otherwise would have for a couple of days, and thus I do not understand why the time I set aside was not taken advantage of. Although I can understand that you may want to keep the details of your investigation confidential until you issue your report, that was not a problem in this case since we had indicated that my Special Assistant would agree to any undertakings of confidentiality that were required.

All my dealings with your Committee, its members and staff have been direct and open and constructive since I joined this Department three and a half years ago. My aim has been to continue that relationship, and thus I was ready to help in this investigation in any way I could. I regret that has not been possible.

Sincerely,

J. Paul McGrath
Assistant Attorney General
Antitrust Division

cc: Representative Hamilton Fish, Jr.
Honorable William French Smith

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

December 5, 1984

Honorable J. Paul McGrath
Assistant Attorney General
Antitrust Division
Department of Justice
Washington, D.C. 20530

Dear Mr. McGrath:

I want to set the record straight in response to your letter of November 29, 1984.

The Committee on the Judiciary, pursuant to its oversight responsibility over the Department of Justice and at the request of a number of other House Committees and Subcommittees, has been conducting an inquiry into the role of the Department of Justice in the withholding of EPA Superfund documents from Congress in 1982-83. Any suggestion that this is not a Committee undertaking is patently inaccurate and an affront to the Committee. Moreover, I cannot understand how you could be "puzzled" or "baffled" about the arrangements for your interview given the clear positions of both the Department and the Committee.

Let me first refresh your memory about the Department's representations regarding interviews of senior officials. On May 18, 1984, Mr. Jensen wrote me stating that "we are willing to make the Department's policy people (Deputy Assistant Attorney General level and higher) available for unrestricted interviews." On November 9, 1984, Mr. Jensen again wrote me about the remaining interviews, including your own. He acknowledged that in the past Departmental representatives had been excluded from the interviews, and the Department retained private counsel for those individuals requesting representation. The letter agreed that this practice would continue.

In the initial telephone conversation with my staff on November 6, 1984, your special assistant indicated that you wished her to be present at your interview. The issue was raised with me that afternoon and I made it absolutely clear that such a condition was inconsistent with the Committee's longstanding procedure and the Department's commitments, and was, in short, unacceptable. At 4:03 p.m. that same day, my staff relayed my explicit statement to your special assistant and explained that private counsel would be permitted to attend if you were concerned about your rights or taping would be allowed if you were concerned about your statements being accurately recorded.

On November 7, 1984, your special assistant wrote my staff confirming that you were holding open three dates -- November 16, 29, and 30 -- for your interview. However, she once again communicated your insistence that she be present at the interview. Upon receiving the letter, my staff again called your special assistant and reiterated the Committee's position. Your special assistant stated that she would relay the message to you.

On November 9, Mr. Jensen's letter arrived restating the Department's understanding of the rules for interviews of officials.

On November 15, my staff contacted your special assistant to make arrangements for your interview the following day -- a date you had suggested. At that time, your assistant stated that the interview had to be cancelled due to an unspecified emergency. She offered as an alternative date November 24, the Saturday after Thanksgiving. In an attempt to accommodate your busy schedule, my staff agreed. When your special assistant once more raised the issue of her presence at the interview, my staff not only continued to state that it was unacceptable, but specifically brought Mr. Jensen's November 9 letter to her attention. My staff noted that if your position was different from the Department's official position, that fact should be formally communicated to the Committee. Your special assistant indicated only that you might be unaware of Mr. Jensen's letter.

On November 19, your special assistant contacted my staff to cancel the interview scheduled for November 24; apparently you were going to be out of the country. She also stated that you had not changed your position about her presence in the interview. She added that Mr. Jensen's letter did not affect the situation. My staff, in this conversation and a subsequent telephone call that day, emphasized that the Committee's position was unequivocal and that if you did not agree with Mr. Jensen's letter either you or Mr. Jensen, or both of you, had an obligation to communicate that in writing to the Committee.

On November 20 and 21, two more letters were sent by your special assistant to my staff which, incredibly, again stated that it was your intent to have her attend the interview. In telephone calls, my staff expressed surprise and continued to advise her of the Committee's position. My staff also told her that the proper channel of communication was not at a staff level, that the Chairman's position had been made clear, and that Mr. Jensen's November 9 letter was the official Department document.

Subsequently, Mr. Jensen and my General Counsel had a conversation in which he asked her to again raise with me the matter of your special assistant's presence at your interview. She did so and my response was unchanged and definitive. This was communicated immediately to Mr. Jensen.

On November 28, my staff had a final conversation with your special assistant to confirm the time and location of the interview. She said nothing about her presence at the interview, and, because, I had heard nothing from you or Mr. Jensen directly, the staff proceeded the next day to your office.

Any suggestion that, as of the time of your interview, you were unaware of the Committee's position in this matter is simply not consistent with the facts.

To make the record absolutely clear, I would also make two additional points.

First, in the 21 months that the Committee investigation has been going on, the staff has interviewed nearly 80 individuals in Congress and at the EPA, the U.S. Attorney's office, and the Department of Justice. Among the witnesses have been a number of senior officials such as yourself, including former EPA Administrator Burford, former U.S. Attorney Stanley Harris, former Deputy Attorney General Edward Schmults, and Acting Assistant Attorney General Richard Willard. You are the only person among all these approximately 80 individuals who has attempted to impose restrictions on his or her interview.

Second, although I understand it may be your "usual practice" to conduct routine "business" with your special assistant present, I would point out that this Congressional investigation is hardly a routine event. The Committee has devoted considerable time and resources to this matter because we consider it an extremely serious matter, raising questions of possible wrongdoing by government officials.

If, upon further reflection, you decide to reconsider your position, please contact the Committee staff to arrange an interview.

Sincerely,

PETER W. RODINO, JR.
Chairman

PWR:emm

cc: Honorable Hamilton Fish, Jr.
Attorney General William French Smith

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 10, 1984

Honorable Peter W. Rodino, Jr.
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Rodino:

This morning I received your letter of December 5, concerning your Committee's request for an interview with me concerning the 1982-83 EPA document matter. As I read your letter, it is a representation by you to me that you understand that the Department of Justice agreed that its officials would be interviewed without anyone else from the Department being present. I had not understood that to be the case, but I had not seen the correspondence you referred to. I do not have a clue why you would request such a condition and even less of a one why anyone here would have agreed to it. Nevertheless, on your representation that there was such an agreement, I am willing to meet with your representative alone solely because our relations and the relations between your Committee and my Division have been straightforward and productive in the past and I do not want to do anything to jeopardize their remaining so in the future.

Accordingly, please ask your staff to contact my office for an appointment.

Sincerely,

Paul

J. Paul McGrath
Assistant Attorney General
Antitrust Division

cc: Honorable Hamilton Fish, Jr.
Honorable William French Smith

U.S. House of Representatives
Committee on the Judiciary
Washington, D.C. 20515
Telephone: 202-225-3951

December 21, 1984

Honorable William French Smith
United States Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

For nearly two years, the Committee on the Judiciary, pursuant to its oversight jurisdiction over the Department of Justice and at the request of a number of other House Committees and Subcommittees, has been conducting an inquiry under Rules X and XI of the House of Representatives into the role of the Department in the withholding of Environmental Protection Agency Superfund documents from Congress in 1982-83. Although the Department has frequently professed cooperation with the Committee inquiry both in its letters and publicly, it has protracted the investigation by withholding information the Committee needs to discharge its oversight responsibilities and its obligations to the House.

Recently, the Department has continued to withhold two classes of documents the Committee requested on September 21, 1984, and has yet to provide any assurances of its compliance with the original Committee document request, dated February 24, 1983. The Committee's right to the information to fulfill its oversight functions and conclude its fact-gathering is clear and unequivocal. The Department has neither advised the Committee that a claim for executive privilege is contemplated with respect to the withheld documents, nor cited any legal basis for the withholding. In this regard, the Department's conduct appears to violate the President's instruction of November 4, 1982, which requires that Executive Branch departments either promptly comply with requests for information of Congressional committees or take the necessary steps to interpose a claim of executive privilege.

The Committee has precisely tailored its requests for information to address specific questions of possible misconduct of Department officials, set forth the precise reasons for each request, negotiated patiently with respect to the underlying documents, and declined to comment on public inquiries about whether the Department has fully cooperated with the Committee inquiry. Therefore, at this time, as more fully described below, the Committee is compelled to require that the Department specifically explain the basis for its actions so that the Committee can evaluate the available alternatives at the beginning of the 99th Congress.

1. The Department has withheld material relating to the Committee's inquiry through June 1984 without articulating a legal basis for doing so. The Committee is aware of no basis for such a naked refusal in response to an official request of a Congressional committee. The Committee has requested these materials to determine if its investigation was deliberately impeded by Department officials, and to attempt further to obtain an accounting of all Department documents covered by the original Committee request of February 24, 1983. Particularly in light of the fact that the Committee inquiry involves possible wrongdoing by Department officials, the Committee cannot accept the Department's refusal to provide these requested documents. While I had sincerely hoped that the Department would reconsider its position voluntarily and minimize the appearance that the Department might be reluctant to produce this information for improper reasons, the Department seems unwilling to do so.

If the Department does not provide these documents immediately, the Committee requests a detailed index of the withheld documents by close of business on Thursday, January 3, 1985. Each document must be described by format, title, name and title of the author, date, length, and name and title of all recipients as well as all persons who have seen the document. The Department must provide a detailed summary of the contents of each portion of each document withheld with an explanation of why that segment is being withheld. With respect to each document, please affirm that the Department is prepared to recommend to the President an assertion of executive privilege, and state the basis for such an executive privilege claim, citing relevant legal authority. In addition, please provide a certification that the list of documents is complete and that the documents are accurately described and contain no evidence of misconduct.

2. The Department has also withheld those documents relating to any investigations of former EPA Assistant Administrator Rita Lavelle that predate March 2, 1983. The Committee has requested these materials to determine whether the Lavelle investigation had an improper genesis. While the Department has denied impropriety, the need for the Committee to address the evidentiary basis and motivation for commencing the investigation is clear.

On several occasions, the Department has refused to make these documents available, citing the special considerations the Department deems applicable to criminal matters. The Committee is not aware of any such ground for denial of a Congressional request for information, but certainly they must give way to the Committee's narrow request that is tailored to make a determination on possible misconduct.

Nonetheless, in the spirit of compromise, last week I instructed the Committee's General Counsel to explore (without waiving the Committee's rights to all the documents initially requested from the criminal file) with the Associate Attorney General the possibility of the Department's production of all "predicate" documents, i.e., the Department would not have to furnish investigative reports by the FBI or Criminal Division personnel reflecting actual investigative work conducted after the opening of the investigation, but rather only the documents that led to the opening of an investigation and prosecution of Ms. Lavelle. Subsequently, the Department made available several letters from former EPA Administrator Gorsuch and some newspaper clippings. These materials by themselves do not shed light on the basis of the Lavelle investigation.

At this time, the Department has yet to provide specific information on why the Lavelle investigation was commenced. In recognition of the Department's strong belief that Congressional access to open criminal files should be restricted, without in any way suggesting that the Department has any legal basis for withholding these materials from the Committee, and acting solely to avoid any unnecessary delay, I am prepared for now to narrow the request to all predicate documents, including, but not limited to, any memoranda or instructions to the Criminal Division or the FBI or the responsible case attorneys and any official documentation of the opening of the investigation. The Committee is not seeking documents reflecting actual investigative work conducted after the opening of the criminal investigation. If the Department does not make all such predicate documents available by January 3, 1985, then the Committee is compelled to require the preparation and submission of an index covering all documents initially requested and a certification of the type described in category 1 above by that date.

3. The Committee has repeatedly attempted to obtain an accounting of all documents responsive to the original request letter of February 24, 1983. In the past, the Committee has sought the Department's assurance that all responsive documents have been produced. I would state once again that the Committee must obtain a certification that the Department's files have been thoroughly searched and that all documents have been produced and none destroyed.

4. The Department has granted access to documents that it previously withheld relating to an internal Department

inquiry into certain events of February 25, 1983. These documents have been reviewed and a limited number of copies requested. If the Department forwards these copies, no further action need be taken on the request for documents in this category.

Sincerely,

Peter W Rod

PETER W. RODINO, JR.
Chairman

PWR:emm

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

MAR 5 1985

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Chairman Rodino:

It is my understanding that the Committee staff has essentially completed its examination of Justice Department documents and its interviews with Department personnel. This process, which was initiated by your February 24, 1983 letter to the Attorney General, concerns the Department's role in the President's assertion of executive privilege over EPA documents being sought by committees of the House of Representatives in late 1982 and early 1983.

At this point, the Department has responded to all requests for documents and interviews made by the Committee staff, and no such requests remain outstanding. During this investigation, the Department has provided unprecedented access to Department files and personnel to assist the Committee staff in its investigation. Thousands of pages of documents have been provided to the staff for inspection, thousands of pages of copies have been provided, and unrestricted interviews with twenty-eight present or former employees of the Department have been arranged upon the staff's request. As discussed in my May 18, 1984 letter to you, the Department has been willing to respond in this manner because of the unique and special circumstances of your inquiry.

The Department has endeavored to provide the Committee staff with access to all relevant documents generated from September, 1982 through March, 1983 regarding the claim of executive privilege asserted over certain EPA documents during oversight investigations by Congressional committees into Superfund enforcement actions. In addition, the Department has provided the Committee staff with access to all documents which relate to the Department's responses to the Committee staff's investigation through June of 1984. During the course of the inquiry there have been numerous requests for information, and the general nature of the request in some instances has required further discussion in order to determine its scope. Nonetheless, in each instance, the Department has instructed its employees and components to search their files and identify all responsive documents in existence at the time of your requests. The range of these requests has changed as the inquiry proceeded, but the Department has nevertheless attempted to accommodate them by locating all responsive documents and providing the Committee staff with access to them.

While the parameters of this investigation have changed over time, let me assure you that it has never been the intention of the Department of Justice to conceal from the Committee staff the existence of any requested documents or to discard any such documents to prevent the Committee staff from obtaining access to them. As you know there was one instance where a trial attorney discarded his files upon being transferred to California. Otherwise, the Department is not aware of any documents within the scope of the Committee's investigation which have been discarded. We understand that the Committee staff has attempted to verify the thoroughness of the Department's production of documents with each person interviewed by the staff, and we have provided the staff with access to all documents which have been requested as part of this verification process. While we believe that any misunderstandings have been resolved, and that all relevant documents have been identified, I wish to reiterate the Department's willingness to cooperate with the Committee staff should it believe that any other relevant documents exist.

While I understand that the staff has completed its fact-finding work at the Department, please feel free to have your staff contact us if any further information is desired by you or the Committee staff.

Sincerely,

D. LOWELL JENSEN
Associate Attorney General

NINETY-NINTH CONGRESS

PETER W. RODINO, JR. (N.J.), CHAIRMAN

JACK BROOKS, TEXAS
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
SAM B. HALL, JR., TEXAS
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
FREDERICK C. BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA

HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
THOMAS N. KINDNESS, OHIO
DAN LUNGREN, CALIFORNIA
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL MCCOLLUM, FLORIDA
E. CLAY SHAW, JR., FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DEWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HANK BROWN, COLORADO
PATRICK L. SWINDALL, GEORGIA
HOWARD COBLE, NORTH CAROLINA

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515
Telephone: 202-225-3951

GENERAL COUNSEL
M. ELAINE MIELKE

STAFF DIRECTOR
GARNER J. CLINE

ASSOCIATE COUNSEL
ALAN F. COFFEY, JR.

March 21, 1985

Honorable Edwin Meese III
Attorney General of the United States
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

The Committee on the Judiciary was recently advised that Department of Justice representatives have questioned Department employees who the Committee has interviewed in its inquiry into the withholding of Environmental Protection Agency Superfund documents. Because the systematic questioning of these employees raised a number of possible concerns in my mind, I asked the Committee's General Counsel to contact Associate Attorney General Jensen to determine precisely what the Department was doing. Unfortunately, Mr. Jensen's response did not fully explain the situation or alleviate my concerns, and I therefore felt it was important to bring the matter directly to your attention. I would hope you would share my feelings about the sensitivity of the situation, and will be able to clarify the Department's position.

As my letter of May 24, 1984, advised the Department (and I personally advised the Associate Attorney General on June 21, 1984), the information that the Committee possesses would appear to raise serious questions about possible misconduct of Executive Branch officials. Once the Committee has finished preparing its report, one possible outcome might be that the Department will have to make a determination on whether there is information requiring invocation of the independent counsel provisions of federal law (28 U.S.C. §591, et seq.). It is imperative that the Department neither prejudge the results of any determination that might be necessary later on, nor prejudice any subsequent investigative effort by the Criminal Division or a special counsel. If the Department is now to carry out an inquiry into the events that are the subjects of the Committee's fact-finding, the Department must do so in a way consistent with its statutory obligations and sensitive to the delicate considerations involved. As senior Department officials have repeatedly advised the Committee with respect to the Lavelle prosecution, special precautions must be taken to avoid tainting the criminal process if there is any possibility it may later be invoked. These precautions include having only experienced criminal investigators or prosecutors conducting preliminary inquiries into potentially criminal conduct.

Of equal concern is the impact that questioning could have on the Committee's inquiry. Most Department employees interviewed by the Committee were advised about the possibility of follow-up questions; that important clarification and confirmation process could be hindered by the Department's questioning those employees, particularly if Department representatives are in any manner communicating to individuals how other employees have responded to Committee questions. Finally, as a precedential matter, debriefing might well discourage Department employees from being candid with Congress in the future.

So that the Committee can understand the information-gathering that is apparently ongoing at the Department, please respond to the following questions:

1. Is the Department conducting a fact-finding inquiry or collecting data on its own on the subject matters of the Committee's investigation?

2. If so: Who proposed the inquiry? Who is conducting the inquiry? What is the purpose of the inquiry? What information is being sought? What standards are guiding the inquiry? Who is supervising the inquiry? (Please name all persons in the supervisory chain.) What specific steps has the Department taken to ensure compliance with the independent counsel provisions? What specific steps has the Department taken to ensure that its ability independently to enforce the criminal law is preserved?

3. Which of the Department employees and former employees who the Committee interviewed have been contacted? (Please list the dates and times of all contacts and scheduled contacts.)

Thank you for your prompt attention.

Sincerely,

Peter W Rodino

PETER W. RODINO, JR.
Chairman

PWR:emn

NINETY-NINTH CONGRESS

PETER W. RODINO, JR. (N.J.), CHAIRMAN

JACK BROOKS, TEXAS
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
JOHN F. SEIBERLING, OHIO
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
SAM B. HALL, JR., TEXAS
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
FREDERICK C. BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA

HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
THOMAS N. KINDNESS, OHIO
DAN LUNGREN, CALIFORNIA
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
E. CLAY SHAW, JR., FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HANK BROWN, COLORADO
PATRICK L. SWINDALL, GEORGIA
HOWARD COBLE, NORTH CAROLINA

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515
Telephone: 202-225-3951

GENERAL COUNSEL
M. ELAINE MIELKE

STAFF DIRECTOR
GARNER J. CLINE

ASSOCIATE COUNSEL
ALAN F. COFFEY, JR.

March 26, 1985

Honorable D. Lowell Jensen
Associate Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Jensen:

I have only recently been able to give careful attention to your letter of March 5, 1985, regarding the Committee on the Judiciary's inquiry into the Department's role in the withholding of Environmental Protection Agency Superfund documents from Congress in 1982-3. As you are well aware, the Committee has been attempting to bring this inquiry to a conclusion for some time. Despite our best efforts, including numerous meetings between myself and Department officials, however, the Department has delayed the completion of the project by failing to comply with the Committee's requests in a timely fashion. Most notably, the Department withheld handwritten notes and other information for over a year without advising the Committee.

Two points in your letter raise serious concerns in my mind about the Department's willingness even now to assist the Committee in finally completing this investigation. First, while your letter seeks to reassure the Committee about the Department's intentions on document production, it once again fails to provide any assurances that the Department has produced all documents responsive to the Committee's information requests. Second, your letter repeatedly refers to the Committee's inquiry as a "staff investigation," despite the fact that, as Chairman of the Committee, I have advised the Department in writing and have told you personally that the EPA investigation is an official undertaking of the Committee.

I must emphasize once again that the Committee's inquiry is being conducted at the request of other Committees of the House and at the behest of the House leadership. The Committee undertook its duties under the authority of Rules X and XI of the House, and the matter has already been the principal subject of three hearings--a full Committee hearing at which former Attorney General William French Smith testified, and two Subcommittee hearings at which former Assistant Attorneys General Theodore Olson and Robert McConnell appeared.

I would point out that your letter's statements about the Department's conduct in the Committee's inquiry are totally inconsistent with your suggestion that it is a staff investigation. Your letter states that the "Department has provided unprecedented access to Department files and personnel," and goes on to recite that many thousands of pages of documents have been made available and many interviews have been arranged. That section of your letter concludes with the statement that "the Department has been willing to respond in this manner because of the unique and special circumstances of your inquiry." While the Committee and the Department might differ on the extent of the Department's cooperation, the steps the Department has taken, such as making employees available, hiring counsel for them, and providing access to internal deliberative materials, are of sufficient moment that your suggestion that the Department has taken them in response to requests by the Committee "staff" is ridiculous.

Turning to the matter of Departmental assurances of full production, there are a number of reasons, beyond the obvious need for procedural thoroughness, that make such assurances necessary. Written assurances are particularly necessary given the Department's conduct in the inquiry thus far, which leaves open the question of whether it has provided all information requested by the Committee. In this regard, the statement in your letter that "[t]he Department has endeavored to provide the Committee staff with access to all relevant documents generated from September, 1982 through March, 1983" is misleading. As noted above, the Department did not even advise the Committee of the existence of handwritten notes and chronologies of vital importance for over one year.

There are other disquieting facts as well. At least two key documents reflecting the fruits of the Department's efforts to collect campaign contribution information on Members of Congress were never made available by the Department. The

Committee learned of the documents only when the Committee staff asked a direct question about them in an interview with a Department employee. When the Committee secured copies of the documents directly from the employee, the Department representatives said the Committee was not to obtain documents in that manner in the future.

In addition, your letter states that the Department has provided the Committee staff with access to all documents which relate to the Department's responses to the Committee's investigation through June of 1984. There is evidence that there is one document (if not more) that has never been provided. The Committee staff recently advised Department representatives that the Committee had been told about a relevant June, 1984, letter from former Deputy Attorney General Schmults addressed to then-Assistant Attorney General Olson. The Department representatives told the Committee that the letter could not be located in the Department's files and that Mr. Olson's attorney had advised them that Mr. Olson had no recollection of the letter and that Mr. Olson had checked with Mr. Schmults who also had no recollection of the letter. The Committee has subsequently confirmed its report that such a letter once existed.

Your letter also states that with respect to each Committee request, "the Department has instructed its employees and components to search their files and identify all responsive documents in existence at the time of your requests." Yet, in a number of instances, the Committee has had to identify for the Department the employees who needed to be contacted. At the time of the original Committee request in February, 1983, for example, the Department failed to contact a host of employees with involvement in the controversy. Based on what the Committee has experienced, it does not appear that the Department on its own has ever made any comprehensive effort to contact all employees who might have relevant documents and ask that they be made available. Moreover, it does not appear that there was ever a serious effort made to secure all relevant documents. As your letter admits, the files of at least one attorney were destroyed; other relevant files were apparently removed from the Department with departing senior officials.

Although your letter states that the Department has "endeavored" to produce all documents, denies that it has been the Department's "intention" to "conceal" documents and states that it will cooperate with future requests, the fact remains that it does not state that the Department has produced all documents. It is not a sufficient answer to say the Department will produce documents should the Committee identify them. The Department and not the Committee must be responsible for document production and must be prepared to account for production.

I once again request that the Department provide a statement that all responsive documents have been made available for inspection.

Sincerely,

Peter W Rodino Jr

PETER W. RODINO, JR.
Chairman

PWR:emm

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

April 12, 1985

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Chairman Rodino:

The Attorney General has asked me to respond to your March 21, 1985 letter concerning the inquiry into the assertion of executive privilege over certain Environmental Protection Agency documents in late 1982 and early 1983. That letter specifically addresses the question of Justice Department officials discussing facts and issues concerning the Department's activities on this matter with several persons whom your staff has previously interviewed. I am also responding to your March 26, 1985 letter to me, which concerns the providing of documents by the Department to the Committee staff.

Your March 21 letter states a charge that "information that the Committee possesses would appear to raise serious questions about possible misconduct of Executive Branch officials." I must note that you have communicated that serious charge to us before and that over the past year we have been unable to obtain a response to requests from both former Attorney General Smith and me that you apprise the Department more specifically of the basis of such statements. (See Attorney General's letter of June 7, 1984 and my letter of November 19, 1984.) Once again I would ask that you provide us the information upon which that charge is based so that the Department could take any necessary action.

As you know, we requested that a Department representative be present at the Judiciary Committee staff interviews of past and present Department employees so that the Department would be in a position to receive information concerning this matter while, at the same time, agreeing that it would not communicate the substance of the interviews to other designated interviewees. As you know, this procedure was not used because of your staff's objection. Thereafter, during approximately six months of these Committee staff interviews, the Department refrained from conducting its own inquiry and made no effort to discuss the events at issue with the potential interviewees. The Department at the same time gave extensive cooperation to the Committee staff by providing access to and copies of voluminous documents and by arranging for many of the interviews conducted by the staff. The Department officials who carried out day-to-day liaison with the Committee staff, two career Civil Division attorneys, were also responsible for providing general information to some interviewees or their counsel concerning the anticipated nature, scope and format of the requested interviews. They explicitly declined to discuss the substance of the interviews with any interviewees. Your staff was aware of, and, as far as we know, in accord with this procedure.

Once the interviews had been concluded, the expressed concern that potential interviewees not be substantively prepared by the Department utilizing information obtained from prior interviewees was no longer an issue. At that time, the Attorney General decided that in light of the extensiveness of the inquiry and the repeated unspecified charges of "misconduct," along with the ongoing need of the Attorney General to be fully informed on Departmental conduct, that the Department should review the facts and issues concerning the Department's participation in the assertion of executive privilege in late 1982 and early 1983 by way of a discussion with the members of the Department who had been interviewed.

This general review of the subject is being carried out under my supervision and will not foreclose or taint any action, investigative or otherwise, which the Department may find to be appropriate in the future. To date we have discussed the events of 1982-83 with eight persons previously interviewed by your staff. Those discussions were entirely voluntary, and did not constitute a "debriefing" of the staff interviews. I can assure you that the persons with whom discussions were had were asked not to discuss specific questions posed by your staff or answers given. Rather, the discussions focused on questions about the underlying controversy based upon our general perception of the issues which have been raised. Therefore, I believe there is no basis for any concern that these discussions would interfere with any possible "follow-up" questions by your staff in the future.

I am also taking this opportunity to respond to your March 26, 1985 letter to me. I cannot help but comment on the contrast between your March 26 letter to the effect that the Department has not done enough and your March 21 letter which seems to say that the Department is doing too much. Let me try to review again the record of the Department's efforts to provide the Committee staff with access to documents and employees of the Department. As a review of your correspondence, beginning on February 24, 1983, makes clear, the several requests received from you and the Committee staff for documents have varied over time. It is also true that the restrictions fashioned by your staff for the conduct of interviews of Department employees have made the job of responding to the document requests more difficult.

The original document request, stated in your letter of February 24, 1983, sought "all documents prepared by or in the possession of the Department in any way relating to the withholding of documents that Congressional committees have subpoenaed from the EPA." This request was extremely broad presenting substantial questions as to its scope. Subsequent requests varied significantly from this original request for executive privilege-related documents from September 1982 to March 1983.

By way of example, your request of September 21, 1984 asked for access to "all" documents pertaining to the criminal prosecution of Rita Lavelle pre-dating March 2, 1983 and "all" documents pertaining to the Department's response to the Committee's inquiry, areas clearly beyond the scope of your original request. Similarly, your letter of October 21, 1984, sought additional materials beyond the scope of the original request, including documents relating to former Assistant Attorney General Olson's testimony in March 1983, and documents concerning Department activities in September 1983. As the appendix to that letter indicates, these documents had not been requested previously. Indeed, your letter even asked for documents pertaining to an alleged "walling off" of the Office of Legal Counsel, a category of documents which never existed.

Nevertheless, we have continued to cooperate throughout the interview process and, in addition, cooperated with the Committee staff in locating documents requested by the staff. In some cases, the Committee staff possessed more specific information concerning documents sought which would have aided the Department in locating them, but, withheld that information from the Department's representatives until pressed for more specific information.

Another example of the problems we have faced is illustrated by one of the specific points raised in your March 26 letter. It suggests that the Department is withholding a letter allegedly sent to former Assistant Attorney General Olson from former Deputy Attorney General Schmults in June 1984. We have searched for this letter on two occasions at the request of your staff and have been unable to locate any such document. Furthermore, we have been advised that neither Mr. Schmults nor Mr. Olson have any record or recollection of such a letter. You state that your staff has been told of this letter from certain unnamed sources. If the Committee staff has information which would assist the Department in defining and locating this letter, we ask that you provide us with this information to enable us to do so. It does not seem appropriate to criticize the Department's inability to locate this letter, despite its good faith efforts to do so, while simultaneously withholding information which could be useful in clarifying this matter.

Your March 26 letter also criticizes the Department for asking the Committee staff to make all requests for Department documents through the Department's representatives. This request was made simply to facilitate and coordinate the production of documents. We are puzzled by this criticism in that your staff, by its own assessment, has noted that the production of documents has improved through this and similar procedures and, to the best of our knowledge, has abided by our request for centralization of document requests.

Finally, your letter criticizes the manner in which the Department has attempted to locate documents from present and former employees. As your staff has known for some time, it has been the practice of the Department, upon receipt of a general request for documents, to contact those persons who have been identified as potential interviewees to request that they examine their files for responsive documents and to review the files of those components of the Department involved in this matter. We had thought, here again, that this procedure was satisfactory.

As I have stated previously, the Department will continue to cooperate with your staff in providing access to relevant documents. Throughout this inquiry, the Department has examined its records in the manner described and has provided the Committee staff with access to all material relevant to the Committee's requests. Please let me assure you that at this time the Department is not aware of any requested documents which have not been identified for the Committee staff.

I would be pleased to meet with you to discuss these matters further.

Sincerely,

D. Lowell Jensen
Acting Deputy Attorney General

BLANK PAGE

3120

Appendix 5: Individuals Interviewed by the House Committee on the Judiciary

BLANK PAGE

3122

Individuals Interviewed By The House Committee on The Judiciary*

Department of Justice

1. Edward Schmults	Deputy Attorney General	May 30, 1984, February 7, 1985
2. Carol Dinkins (represented by counsel)	Assistant Attorney General, Land and Natural Resources Division	January 8-9, 1985
3. Robert McConnell (represented by counsel)	Assistant Attorney General, Office of Legislative Affairs	January 4, 1985
4. Paul McGrath	Assistant Attorney General, Civil Division	December 27, 1984
5. Theodore Olson (represented by counsel)	Assistant Attorney General, Office of Legal Counsel	December 19-21, 1984
6. Michael Dolan	Deputy Assistant Attorney General, Office of Legislative Affairs	September 12-13, 1984, July 11, 1985, July 26, 1985 (by telephone)
7. John Keeney	Deputy Assistant Attorney General, Criminal Division	May 9, 1983, January 15, 1985, February 4, 1985 (by telephone)
8. Alfred Regnery	Deputy Assistant Attorney General, Land and National Resources Division	October 31, 1984
9. Larry Simms (represented by counsel)	Deputy Assistant Attorney General, Office of Legal Counsel	October 17-19, November 2, 14-16, 22, 1984, August 5, 1985

---

* Listed, by column, are: the individual's name, his or her position at the time of the EPA controversy, and the dates of his or her interview by the Committee.

10.	Mary Walker (represented by counsel)	Deputy Assistant Attorney General, Land and Natural Resources Division	October 22-23, 1984
11.	Richard Willard (represented by counsel)	Deputy Assistant Attorney General, Civil Division	October 24, 1984
12.	Stephen Ramsey (represented by counsel)	Chief, Environmental Enforcement Section, Land and Natural Resources Division	September 27-28, 1984, August 7, 1985
13.	Ann Gailis (represented by counsel)	Attorney, Land and Natural Resources Division	October 5, 1984
14.	Michael Green	Attorney, Land and Natural Resources Division	February 5, 1985
15.	Paul Schaeffer	Attorney, Land and Natural Resources Division	February 21, 1985
16.	Anne Shields	Attorney, Land and Natural Resources Division	February 5, 1985
17.	Marty Kaplan (represented by counsel)	Paralegal, Land and Natural Resources Division	October 3, 1984 August 7, 1985 (by telephone)
18.	Laurel Malson (represented by counsel)	Attorney, Office of Legal Counsel	October 1-2, 1984, July 26, 1985
19.	Mark Rotenberg (represented by counsel)	Attorney, Office of Legal Counsel	September 25, 1984
20.	Lewis Wise	Assistant Branch Chief, Civil Division	September 7, 1984

21.	Greg Walden	Special Assistant to McGrath, Civil Division	August 30, 1984
22.	Betsy Grey	Attorney, Civil Division	September 6, 1984
23.	Andrew Wolfe	Attorney, Civil Division	November 1, 1984, July 29, 1985 (by telephone)
24.	Thomas DeCair	Director, Office of Public Affairs	December 6, 1984
25.	Art Brill	Deputy Director, Office of Public Affairs	October 31, 1984
26.	William Hendricks	Deputy Chief, Public Integrity Section	January 15, February 5, 1985

Office of the United States Attorney for the District of Columbia

1.	Stanley Harris	United States Attorney	May 31, 1983
2.	Royce Lamberth	Chief, Civil Division	May 31, 1983

White House

1.	Fred Fielding	Counsel to the President	November 13, 1984
2.	Richard Hauser	Deputy Counsel to the President	November 13, 1984
3.	Sherrie Cooksey	Associate Counsel to the President	November 13, 1984

Environmental Protection Agency

1.	Anne Gorsuch Burford (represented by counsel)	Administrator	June 7-8, 1984
2.	John Daniel	Chief of Staff	September 19, 1983, March 30, April 6, 12, 1984, July 12, 1985
3.	Robert Perry	Associate Administrator and General Counsel	August 15, 1984
4.	Michael Brown	Acting Enforcement Counsel and Deputy General Counsel	August 31, 1983, April 18, 1984, July 2, 1984 (by telephone), July 30, 1985

5.	Joseph Cannon	Associate Administrator for Policy and Resource Management	April 26, 1984 (by telephone)
6.	Leland Modesitt	Director of the Office of Congressional Liaison	April 17, 1984
7.	Gerald Yamada	Associate General Counsel for Grants, Contracts, and General Law and Acting Deputy General Counsel	August 17, 1983, March 29, 1984, July 17, 1985
8.	Gene Lucero	Acting Director, Office of Waste Programs Enforcement, OSWER	June 12, 1984
9.	Edward Kurent	Associate Enforcement Counsel for Hazardous Waste	July 19, 1985 (by telephone)
10.	Richard Mays	Special Assistant to the Acting Enforcement Counsel and Deputy General Counsel	August 16, 31, 1983, March 29, May 11, 1984, April 23, June 17, 1984 (by telephone), July 31, 1985
11.	Kirk Sniff	Director, Office of Legal and Enforcement Policy, OLEC	April 3, 1984, April 26, 1984 (by telephone)
12.	Steve Leifer	Acting Chief, Guidance Development Branch, OLEC	September 1, 1983, April 2, 1984, June 29, 1984 (by telephone), July 31, 1985
13.	Kim Pearson	Special Assistant to Perry	April 5, 1984 (by telephone), April 6, 1984
14.	Winston Haythe	Staff Director for Perry and Regional Coordinator, Office of Legal and Enforcement Policy	April 26, 1984
15.	Fred Stiehl	Deputy Associate Enforcement Counsel for Hazardous Waste	April 13, 1984, February 27, 1985 (by telephone)
16.	Lori Gribbon	Associate Director, Office of Congressional Liaison	April 5, 1984

17.	Lee DeHihns	Acting Associate General Counsel for Grants, Contracts, and General Law	April 12, 1984
18.	Richard Emory	Northern Region Branch Chief, OLEC	May 17, 1984
19.	Kathy Summerlee	Western Region Branch Chief, OLEC	April 16, 1984
20.	Glen Unterberger	Chief, General Policy and Review Branch, OLEC	April 4, 1984
21.	Mary Bielefeld	Attorney-Adviser, OLEC	May 3, 1984 (by telephone)
22.	Kathryn Bouve	Attorney-Adviser, OLEC	April 27, 1984 (by telephone)
23.	Mitchell Burack	Attorney-Adviser, OLEC	April 23, 1984 (by telephone)
24.	Mary Dick	Attorney-Adviser, OLEC	April 26, 1984 (by telephone)
25.	Tod Firetog	Attorney-Adviser, OLEC	June 19, 1984 (by telephone)
26.	Edmund Gorman	Attorney-Adviser, OLEC	May 18, 1984
27.	Heidi Hughes	Attorney-Adviser, OLEC	September 26, 1983, April 24, 1984, July 18, 1985 (by telephone)
28.	Jonathan Libber	Attorney-Adviser, OLEC	June 19, 1984
29.	Jerome Muys	Attorney-Adviser, OLEC	February 7, 1985, July 22, 1985 (by telephone)
30.	Jerry Schwartz	Attorney-Adviser, OLEC	April 13, 1984, May 4, 1984 and July 19, 1985 (by telephone)
31.	Ann Strickland	Attorney-Adviser, OLEC	April 25-26, 1984 (by telephone), July 11, 18, 1985
32.	John Wheeler	Attorney-Adviser, OLEC	April 26, 1984 (by telephone)
33.	Deborah Woitte	Attorney-Adviser, OLEC	April 23,1984

34.	Frank Biros	Deputy Director, Office of Waste Programs Enforcement, OSWER	May 21, 1984
35.	Deborah Dalton	Environmental Scientist, OWPE	May 22, 1984
36.	Michael Murphy	Attorney-Adviser, OLEC and OSWER	May 24, 1984

House of Representatives

1.	Kirk O'Donnell	General Counsel to the Speaker	March 28, 1984
2.	Stanley Brand	General Counsel to the Clerk	September 16, 1983, May 28, 1985 (by telephone)
3.	Steve Ross	Deputy General Counsel to the Clerk	September 16, 1983
4.	Hyde Murray	Counsel to the Republican Leader	September 15, 1983 March 22, 1984
5.	William Pitts	Floor Assistant to the Republican Leader	March 30, 1984
6.	Alan Parker	General Counsel, Committee on the Judiciary	May 20, 1985 (by telephone)
7.	Richard Sullivan	Chief Counsel, Committee on Public Works and Transportation	April 23, 1984
8.	Larry Reida	Minority Counsel, Committee on Public Works and Transportation	April 3, 1984
9.	Jack Schenendorf	Associate Minority Counsel, Committee on Public Works and Transportation	April 19, 1984
10.	John O'Hara	Staff Director and Counsel, Levitas Subcommittee	April 23, 1984
11.	Paul Yates	Minority Staff Director, Levitas Subcommittee	September 26, 1983
12.	Robert Prolman	Professional Staff Member, Levitas Subcommittee	August 12, September 23, 1983, March 21, 1984, June 13, 1984 (by telephone)

13.	Sante Esposito	Counsel, Levitas Subcommittee	March 21, 1984
14.	Marti Downie	Minority Clerk, Levitas Subcommittee	September 23, 1983
15.	Charles Ziegler	Minority Counsel, Levitas Subcommittee	August 12, 1983, March 21, 1984
16.	Michael Barrett	Chief Counsel and Staff Director, Dingell Subcommittee	April 5, 1984
17.	James Christy	Minority Counsel, Dingell Subcommittee	April 5, 1984
18.	Mark Raabe	Counsel, Dingell Subcommittee	April 17-18, 1984
19.	Richard Frandsen	Counsel, Dingell Subcommittee	March 28, 1984
20.	Debra Jacobson	Counsel, Dingell Subcommittee	April 5, 1984
21.	Patrick McLain	Counsel, Dingell Subcommittee	April 17, 1984
22.	Lester Brown	Professional Staff Member, Synar Subcommittee	August 2, 1984
23.	George Kopp	Staff Director and Counsel, Scheuer Subcommittee	July 21, 1983 (by telephone)
24.	Gregory Lawler	Staff Director, Florio Subcommittee	July 22, 1983
25.	Steve Champlin	Staff of Representative Bonior	April 24, 1984 (by telephone)